Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Department of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	Chapter 120
Regulation Title:	Managed Care
Action Title:	Medallion II
Date:	GOVERNOR'S APPROVAL NEEDED BY 05/28/02

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapter 1073 of the 2000 Acts of Assembly Item 319 J directed the Agency to seek federal approval of certain changes to its Medallion II program. The purpose of the mandated changes was to bring this waiver program into compliance with recent federal law changes as well as other federal changes and changes which reflect industry standards of practice.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 2.2-4000, for an agency's promulgation of proposed regulations subject to the Governor's review

Subsequent to an emergency regulation adoption action, the Agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on December 1, 2001. The Code, at § 2-2-4011 requires the Agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action was filed with the Virginia Registrar on November 30, 2001.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to promulgate new permanent regulations, to supercede the existing permanent regulations and the currently operating emergency regulations, to bring this waiver program into compliance with recent Federal law changes as well as other federal changes, changes to industry standards of practice, and to make certain other programmatic changes necessary to for the improved efficiency and effectiveness of this programs.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The regulations affected by this action are Medallion II (12 VAC 30-120-360 through 12 VAC 30-120-440).

The purpose of this action is to conform the regulations of the Medallion II waiver to federal law changes contained in the 1997 Balanced Budget Act, requirements of the Health Care Financing Administration (HCFA) (now the Centers for Medicare and Medicaid Services (CMS)), and state industry standards.

Based on changes enacted by the Balanced Budget Act of 1997, and new waiver requirements of CMS, the Agency is required to implement new program regulations. Additionally, the Agency must conform its regulations to Item 319K of the Governor's 2000 budget language. This language required the Agency to modify the process by which Medicaid recipients are enrolled into managed care programs. Even though the Governor's budget was not adopted as an Appropriations Act, neither the House Appropriations committee nor the Senate Finance committee objected to this provision.

Major changes to the Medallion II regulations include:

· Rescinding of 12VAC30-120-385. This provision previously provided that mental health services to recipients in Northern Virginia would be provided outside of any MCO on a fee for service basis. In order to fully implement managed care services within the Northern Virginia area, this section must be repealed. If the Agency is unable to permanently implement managed care services in Northern Virginia, the lack of MCOs would have an impact on the delivery of quality managed care services to citizens of Northern Virginia.

· Shortening of the pre-assignment process - 12VAC30-120-370. This regulatory change would allow recipients to be enrolled into managed care sooner by reducing the current waiting period of 45 days to 30 days. This reduction in the waiting period would allow a recipient to more efficiently access quality managed health care. The shortening of the pre-assignment process was mandated in Chapter 1073 of the 2000 Acts of Assembly Item 319 J.

· Changes in recipients who may be excluded from the program - 12VAC30-120-370. This change excludes participants in residential treatment or treatment foster care programs from participating in managed care programs. This regulation further allows for recipients receiving managed care services in areas where there is only one contracted Managed Care Organizations (MCOs) to have a choice of enrolling with the contracted MCO or the area's Primary Care Case Management (PCCM) programs.

All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed to change from either the contracted MCO to the PCCM program or vice versa within 90 days after the effective date of enrollment.

This regulatory change would bring the regulations into compliance with the waiver which CMS recently approved and allow the Agency to implement the expansion of the MCO program statewide. Without this change, the legislatively mandated expansion cannot proceed.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Compliance with new provisions will allow the Commonwealth to meet specific managed care objectives such as broading access to care and ultimately improving health outcomes for recipients. Likewise, shortening the pre-assignment process allows recipients to enroll in managed care programs sooner; thereby increasing access to care, and again, improving health outcomes. Recipients residing in areas where there is only one contracted MCO now have a choice of enrolling with either the MCO or PCCM program. Recipients are also afforded more flexibility by being able to change programs within 90 days of their original effective date. Additional enhancements include mental health services offered through the MCO for Northern Virgina recipients; thereby paving the way for all services to be provided within the same program. These revisions also assure compliance with recent Federal changes and industry standards and allow for certain programmatic changes necessary to improve efficiency and effectiveness. Furthermore, compliance with federal changes assures that the Commonwealth will not be in danger of loss of federal financial participation for the program. The revised definitions are consistent with current Federal definitions.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Under federal regulations Virginia cannot spend more for Medicaid recipients in the Medallion II program than would be spent for the same population under the Medicaid fee-for-service program. DMAS sets the capitation rates for the MEDALLION II program (the rates paid to the HMOs) by estimating the cost of this population per person per month in the fee-for-service program in the contract year and reducing that amount by 5 percent. This 5 percent adjustment reflects the amount of savings accrued to the Medicaid program from Medallion II.

Current projections of Medicaid HMO expenditures are $760.4 million in FY 2003 and $854.7 million in FY 2004.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

12 VAC 30-120-360	Added language to emergency services definition to include participating and non-participating providers; clarifies definition to ensure access to care
	Added definition of Managed Care Organization and PCCM
	Added definition of Exclusion
12 VAC 30-120-370 B6 B10 B 7 through B 8, 11, 12, 13 D 3	Added residential treatment or treatment foster care programs to list of exclusions; Deletes individuals with comprehensive insurance from exclusion in program; Change HMO to MCO; Changes pre-assignment days from 45 to 30
12 VAC 30-120-370 D 4 through E3	Change HMO to MCO
12VAC30-120-370 E 4	Added language for one MCO per region
12VAC30-120-370 F through H	Change HMO to MCO or PCCM
12VAC 30-120-380 A & B	Change HMO to MCO or PCCM; Language deleted relating to Emergency services
12VAC 30-120-380 D through G and L	Change HMO to MCO
12VAC30-120-380 K	Deletes language relating to case management
12 VAC 30-120-385	Repeals expired budget language in order to implement Northern Virginia Medallion II
12 VAC 30-120-390	Change HMO to MCO
12 VAC 30-120-395	Change HMO to MCO
12 VAC 30-120-400 A through C	Change HMO to MCO
12 VAC 30-120-410 B through F	Change HMO to MCO
12 VAC 30-120-420 A through M	Change HMO to MCO

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Some of the regulatory changes contained herein have either been mandated to the Agency by the General Assembly. Other changes are intended to bring the Agency's regulations into to a series of federal law changes and community medical standards of practice. Failure to update the regulations will place the Agency out of compliance for the operation of the managed care programs and the Agency will be unable to implement the permanent expansion of MCOs through out the Commonwealth. Failure to expand these programs will impact the projected budget savings and will have a negative monetary result on the agency and the Commonwealth.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Agency received one letter commenting on these regulatory changes. The commenter represents the Alexandria Community Services Board (CSB) who stated that he was opposed to the carve-out of mental health services. The commenter noted the carve out was required by the Virginia General Assembly and that the General Assembly intended that this be done in the roll out of managed care in Northern Virginia. Additionally, he noted that the intention continues and while the budget language, which provided the authority for the carve-out, has the force for the period covered by it, that no circumstances have changed to suggest that intention no longer exist. The Commenter noted that it is his belief that the problems with the managed care roll out which were to be avoided by the carve-out are now occurring as predicted. The commenter requested that not only the regulation be changed, but that the Agency should modify its current contracts with MCOs to comply with the regulation.

Agency Response: If the Agency did not rescind this regulatory provision, the CSBs and other mental health providers would become the first line of providers for these services, potentially leaving these recipients with fragmented health care. CSBs and other mental health providers are not barred from participating with the MCOs by contract.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Agency regularly reviews the federal and state laws and policies which impact regulations relating to the Medicaid managed care program in the Commonwealth.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Implementation of the new regulations would allow the citizens of the Commonwealth to continue receiving quality health care through the expansion of managed care; allowing exemptions under specific circumstances for children with special health care needs; allowing recipients to receive services under managed care earlier, thereby establishing the physician/patient relationship, and allowing pregnant women to receive quality prenatal care earlier.

Only to the extent that these managed health care programs provide improved quality of care will this regulatory action have any impact on the institution of the family and family stability including strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children; encouraging or discouraging economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents, strengthening or eroding the marital commitment; and increasing or decreasing disposable family income.