Virginia Regulatory Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC30-120-360 through -120-420
Regulation title	Mandatory Capitated Managed Care Delivery System (Medallion 3.0)
Action title	2014 Mandatory Managed Care Changes
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

1) Please explain why this is an emergency situation as described above.
2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Section 2.2-4011(B) of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4).

Chapter 2, Item 301 N of the *2014 Acts of Assembly* provide the Department the ongoing authority to:

> *1. Seek federal approval of changes to its MEDALLION waiver and its Medallion II waiver.*
> *2. Conform the state regulations to the federally approved changes and, in order to implement the provisions of this act, the Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes.*

DMAS sought federal approval of these changes to this § 1915(b) of the *Social Security Act* waiver and received CMS approval dated July 14, 2014. This action conforms the Department's regulations to the federally approved waiver changes.

The Governor is hereby requested to approve this agency's adoption of this emergency regulation action entitled 2014 Mandatory Managed Care Changes (12 VAC 30-120-360 through 12 VAC 30-120-460) and initiate the permanent rule making action established by the *Code of Virginia* 2.2-4007 et seq.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] (the *Act*) provides governing authority for payments for services.

DMAS operates its managed care program under the authority of section 1915(b) of the *Social Security Act* which permits the waiving of Medicaid individuals' freedom of choice of providers of health care to enable mandatory enrollment in managed care.

DMAS operates its home and community based care waivers (such as the Elderly or Disabled with Consumer Direction waiver) under the authority of section 1915(c) of the *Act* that permits the waiving of the comparability rule (42 CFR 440. 240), which requires that services covered for any eligible individual in a covered group must be covered for all individuals in that group. These waivers enable the coverage of specific services, such as personal care, respite care, adult

day health care, etc., to enable individuals to avoid institutionalization and support them in their homes and communities.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this emergency regulation action is to implement several mandates from various legislative actions to: (i) require individuals who are participating in a home and community based care services waiver, specifically the Elderly or Disabled with Consumer Direction waiver, to also be enrolled in Medicaid contracted managed care organizations; and (ii) require expedited enrollment for Medicaid individuals into Medicaid contracted managed care organizations, especially for pregnant women.

These regulations apply to Managed Care Organizations (MCOs). Small business requirements do not apply to MCOs because managed care organizations do not meet the definition of small businesses.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

DMAS' managed care program provides for improved access to care, promotes disease prevention, ensures quality of care, and reduces Medicaid expenditures for the enrolled individuals. These are all important results for the Medicaid individuals who participate in managed care.

The Commonwealth's citizens are not directly affected by these changes with the exception of the reduction of Medicaid expenditures.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

CURRENT POLICY

Medallion II, a mandatory Managed Care Organization (MCO) program, expanded throughout the Commonwealth the use of managed care for the delivery of health care to Medicaid recipients. Medallion II was created for the purposes of further improving access to care, promoting disease prevention, ensuring quality care, and reducing Medicaid expenditures. The program requires mandatory enrollment into a contracted MCO for certain specified groups of Medicaid recipients (12 VAC 30-120-370 A). Also, certain specified groups of individuals are excluded from managed care enrollment (12 VAC 30-120-370 B). MCOs have provided the Commonwealth with the most value per taxpayer dollar for the provision of high quality health care and provide an integrated, comprehensive delivery system to individuals enrolled in Medicaid. The regulations in this Chapter (12 VAC 30-120 sections 360 through 420) were promulgated to implement this program.

Currently, the managed care health plans provide acute care coverage for approximately 4,600 home and community-based (HCB) waiver participants through the Acute and Long Term Care (ALTC) Phase 1 program. This includes individuals enrolled in the Elderly or Disabled with Consumer Direction (EDCD) Waiver, the Intellectual Disability (ID) Waiver, the Individuals and Family Developmental Disabilities Support (IFDDS) Waiver, the Day Support (DS) Waiver, and the Alzheimer's Assisted Living (AAL) Waiver. Under the Phase 1 program, if a MCO enrolled Medicaid member subsequently becomes eligible for and enrolled into one of five HCB waivers, then he remains enrolled with the MCO for primary and acute care services while all long-term care services, such as personal care, respite care, Personal Emergency Response Systems, and environmental modifications, are covered under the fee-for-service reimbursement system.

The 2011 *Acts of Assembly* Item 297 MMMM.1 directed the Department to:

…seek federal authority through amendments to the State Plan under Title XIX of the Social Security Act, and any necessary waivers, to allow individuals enrolled in Home and Community Based Care (HCBC) waivers to also be enrolled in contracted Medallion II managed care organizations for the purposes of receiving acute and medical care services

Effective December 1, 2014, the Department will launch the Health and Acute Care Program (HAP). This initiative will allow eligible HCB waiver enrollees to receive their acute and primary medical care through one of the managed care health plans and, concurrently, the individual's HCB care waiver services, including transportation to the waivered services, will be paid through the Medicaid fee-for-service system as a "carved out" service. These individuals will be participating concurrently in both § 1915(b) and § 1915(c) waivers. As part of the HAP initiative, approximately 2,700 individuals enrolled in the Elderly or Disabled with Consumer Direction (EDCD) waiver who currently receive acute medical services in the fee-for-service program and who are eligible for managed care (i.e., do not have any managed care exclusions) will be transitioned into managed care in December. The ALTC program will be rebranded as HAP.

The 2012 *Acts of Assembly*, Chapter 3 Item 307 FFF.

The department may seek federal authority through amendments to the State Plans under Title XIX and XXI of the Social Security Act, and appropriate waivers to such, to develop and implement programmatic and system changes that allow expedited enrollment of Medicaid eligible recipients into Medicaid managed care, most importantly for pregnant women.

In an effort to ensure that newly eligible Medicaid individuals, especially pregnant women, have quicker access to the managed care delivery system, the Department will shorten the period of time between an individual being identified as Medicaid eligible and that individual's enrollment into a managed care organization (MCO). DMAS anticipates that this new process will reduce disruptions of continuity of care by minimizing the movement of individuals between the fee-for-service and the managed care delivery systems.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
12VAC 30-120-360	Definitions. Updated with current terminology and removed unused terms.		Updating of terminology and program name.
12VAC 30-120-370	Mandatory enrollees. Program name updated; exception provided for certain EDCD participants to enroll in managed care.		Allows enrollees to access services via managed care in an expedited manner. Requires certain EDCD individuals who currently receive acute and primary medical services through fee-for-service to receive those services via the managed care delivery system.
12VAC 30-120-380	MCO responsibilities.		Updating terminology.
12VAC 30-120-390	Payment rate.		Updating terminology.
12 VAC 30-120-395	Payment rate for out-of-network providers.		Updating terminology.
12VAC 30-120-400	Quality control and utilization review.		No changes.
12VAC 30-120-410	Sanctions.		Updating terminology.
12VAC 30-120-420	Enrollee grievances and appeals.		Updating terminology.

Technical corrections have also been made. They are: removal of references to the AIDS waiver because it was not renewed by the Commonwealth effective 6/30/2012; removal of mental retardation references because that previous waiver's name has been replaced with Individuals with Intellectual Disabilities, and; making the use of terminology consistent throughout the regulations as the terms are defined in 12 VAC 30-120-360.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Due to the nature of the legislative mandates, policy alternatives were not permitted to DMAS.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to Adrienne Fegans, DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219; Adrienne.Fegans@dmas.virginia.gov ; 804/786-4112**;** fax 804/786-1680]. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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. It does not strengthen or erode the marital commitment, nor increase or decrease disposable family income.