

REGULATORY REVIEW CHECKLIST

To accompany Preliminary Determination Package

Agency Department of Medical Assistance Services

Regulation title Amount, Duration and Scope of Services: Clinic Services

Purpose of the regulation To establish provider qualifications for community mental health clinics providing Medicaid-reimbursed psychotherapy services.

Summary of items attached:

- Item 1:** An explanation of the specific reason for the proposed regulation.
- Item 2:** A statement identifying the source of the agency legal authority to promulgate the contemplated regulations and a statement as to whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate. **(Be sure to attach a copy of all cited legal provisions).**
- Item 3:** A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.
- Item 4:** A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.

/s/ Robert W. Lauterberg
Signature of Agency Head

03/03/1998
Date

03/03/1998 VPS
Date forwarded to
DPB & Secretary

PRELIMINARY JUSTIFICATION for REGULATORY ACTION
UNDER EXECUTIVE ORDER THIRTEEN (94)

I. IDENTIFICATION INFORMATION

Regulation Name: Narrative for the Amount, Duration and Scope of Services: Clinic Services

Issue Name: Qualifications for Community Mental Health Clinic Providers

VAC Numbers: 12 VAC 30-50-180

Registrar's Filing Deadline: _____

II. LEGAL AUTHORITY

Agency Legal Authority: Code of Virginia §§32.1-324 and 32.1-325

BMAS/Director Approval of Action: /s/ Robert W. Lauterberg 3/3/98
Robert W. Lauterberg Date

III. JUSTIFICATION

1. Statement of Reason for Regulation

Department of Medical Assistance Services (DMAS) Program Compliance reviews have illustrated that DMAS policy with regard to the qualifications of therapists in community mental health clinics, primarily Community Service Boards, is not being followed. Because of confusion regarding Medicaid requirements, community mental health clinics are billing DMAS for psychotherapeutic services rendered by a variety of non-licensed personnel. DMAS' longstanding policy has required that "services provided by licensed clinical psychologists and non-licensed professional social workers are reimbursable when provided under physician supervision as billed by the clinic."

It is necessary to clarify policy and ensure that DMAS is billed only when psychotherapeutic services are rendered by staff with appropriate training and supervision.

When psychotherapy services are provided in a private practitioner's office, only specifically licensed personnel are allowed reimbursement for these services. However, state law allows mental health clinics to use non-licensed personnel. Both DMAS and the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) have recognized the need to provide clear guidelines for community mental health clinics on minimum staff qualifications which will entitle those clinics to qualify for Medicaid reimbursement.

To address these concerns, a workgroup comprised of staff from DMAS and DMHMRSAS met to develop clear guidelines on qualifications for staff providing Medicaid-reimbursable psychotherapy services in community mental health clinics. DMHMRSAS raised several concerns about the implementation of the provider credentialing requirements - the fiscal impact on the CSBs and access to care. Both of these concerns can be resolved by establishing a grace period during which the CSBs can convert caseloads to those staff which meet the DMAS standards. The provider standards included in this regulation are the result of this workgroup and have been shared with CSBs for input.

Additional questions have arisen regarding the requirement that licensed providers be supervised by a physician. DMAS recently promulgated regulations allowing Licensed Professional Counselors (LPCs) and Licensed Clinical Social Workers (LCSWs) and licensed Clinical Nurse Specialists-Psychiatric (CNS) to directly enroll and receive reimbursement as Medicaid providers. The provisions regarding direct reimbursement and supervision of LPCs, LCSWs, and CNSs by Medicaid do not affect the CSBs. CSBs are providers enrolled with Medicaid as mental health clinics. By federal definition, clinics must be physician directed. So DMAS cannot remove the supervision requirements for individuals providing services in a clinic. In addition, reimbursement for clinics is calculated differently than reimbursement for private practitioners. The individual clinicians within a clinic are not reimbursed by Medicaid; the clinic is reimbursed. The clinic then reimburses the individuals. The way independent practitioners are reimbursed does not affect reimbursement to individuals providing services in a clinic setting, so independent practitioners will not be affected by these proposed regulations.

This regulatory change will allow a period of 24 months for the community mental health clinics to comply with these more specific provider requirements. Because of this transition period, DMAS does not anticipate a negative fiscal impact on the CSBs. The transition period will also allow the clinics to arrange for enough qualified staff so that the current level of access to care will not be jeopardized. This change will not result in any changes to the number of recipients being served. This change is budget neutral.

2. Federal/State Mandate and Scope

The legal authority of the Agency to administer the Medicaid Program is as stated above (II.). This regulatory change is not the result of a federal or state mandate. This regulation is necessary to assure quality psychotherapy services are provided to Medicaid recipients in a community mental health clinic setting and to reduce confusion among providers about staff qualifications to receive Medicaid reimbursement.

3. Essential Nature of Regulation

DMAS has determined that implementing this regulatory change is essential to protect the health, safety or welfare of citizens by assuring quality psychotherapy services and to eliminate provider confusion resulting from the present unclear policy. This change is also necessary for the equitable, efficient and economical administration of the Medicaid Program so that DMAS can continue to optimize the federal funds available and improve the efficiency of the program.

4. Agency Consideration of Alternatives

Failure to implement qualifications for psychotherapy services will continue the confusion providers are experiencing concerning Medicaid requirements regarding services provided by non-licensed staff employed by CSBs. Development of an effective, enforceable policy requires this regulatory change. Furthermore, without this change the policy will remain unclear, resulting in provider appeals of audit findings and controversy over denied claims.

The Agency will consider any other alternatives identified through the public comment process.

5. Family Impact Assessment (Code of Virginia §2.1-7.2)

This regulatory change is not expected to affect families.