



Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50-130
Regulation title	Amount, Duration and Scope of Services: Skilled nursing facility services, EPSDT, and family planning
Action title	Prior Authorization of Intensive In- Home Services
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The agency is proposing this regulatory action to comply with Chapter 879, Item 306, OO of the 2008 *Acts of Assembly* that gives the Department of Medical Assistance Services (DMAS) authority to implement prior authorization and utilization review for community-based mental health services for children and adults. In recent years the utilization of certain community-based mental health services has increased substantially. Intensive In-Home Services expenditures were expected to increase 25% during SFY 2008. In order to address these expected increases in utilization the General Assembly provided DMAS authority to implement prior authorization of these services in order to ensure that such services are provided based on Medicaid service and appropriate medical necessity criteria. No changes have been made from the previous proposed stage.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background document with the attached amended State Plan pages Prior Authorization of Intensive In-Home Services (12VAC30-50-130) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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] provides governing authority for payments for services.

The 2008 Acts of Assembly, Chapter 879, Item 306 OO provides DMAS the authority to implement prior authorization and utilization review for community-based mental health services for children and adults.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Department is promulgating this regulation to comply with Chapter 879, Item 306, OO of the 2008 *Acts of Assembly* that implements prior authorization review for community-based mental health services for children and adults.

This regulatory action will help protect the health, safety and welfare of Medicaid recipients by minimizing inappropriate utilization of unnecessary services, thereby preserving these important medical services for the recipients who truly need them.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The section of the Virginia Administrative Code that is affected by this action is: Amount, Duration and Scope of Services: Skilled nursing facility services, EPSDT, and family planning - - Prior Authorization of Intensive In-Home Services (12 VAC 30-50-130).

This action implements new prior authorization requirements for Intensive In-Home Services for children and adolescents. DMAS already has regulations that address prior authorization for children's group home services (Levels A & B) and performs utilization review for community-based mental health services. Therefore those aspects of the Item 306 OO of the 2008 General Assembly are already in operation and need not be addressed in this package.

The particular change implemented in this action is directed to subsection 12 VAC 30-50-130 (B)(5)(a) (Community mental health services). This subsection describes Intensive in-home services to children and adolescents under age 21, which includes the following: crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. Intensive in-home services are already limited annually to 26 weeks. In this action DMAS is adding the requirement for prior authorization that providers must obtain in order for them to be reimbursed for these services.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 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 indicate.

The addition of prior authorization will help ensure that services are provided to individuals who meet medical necessity criteria. This will prevent inappropriate utilization of the services and preclude expenditures for unnecessary services.

This regulatory action will require providers to request prior authorization for this service. DMAS made efforts to minimize the amount of documents required for authorization and the frequency for requesting authorization to mitigate the impact on providers.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes are being made between the publication of the proposed stage regulation and the publication of the final stage regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

DMAS' proposed regulations were published in the June 8, 2009, *Virginia Register* for their public comment period from June 8, 2009, through August 7, 2009. No comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC 30-50-130		Under Community mental health services, there is no current explicit requirement for prior authorization for community-based mental health services for children and adults.	This change adds that explicit requirement for prior authorization for community-based mental health services for children and adults.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Intensive In-Home services are intended to be crisis-oriented. In order to minimize the impact on providers, the service can be provided initially, without prior authorization. When the initial time frame is passed, prior authorization will be required for intensive in-home services. This approach allows providers to render services but if the child needs services beyond the initial phase, an authorization is required.

For children's residential (Levels A and B), a length of time between authorizations was chosen to complement Comprehensive Services Act guidelines. Prior authorization is not a new requirement for these services. The provider will now be required to obtain authorization from DMAS or its contractor. Previously, documentation for authorization was required to be in the clinical record.

Family impact

Please assess the 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; or 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.