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Emergency Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC30-135-400; 12 VAC30-135-420; 12 VAC 30-135-430
Regulation title(s)	Demonstration Waivers: Individuals with Serious Mental Illness (SMI)
Action title	GAP Demo Waiver for Individuals with SMI (2 nd REV)
Date	June 20, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

DMAS promulgated its original emergency regulations for the Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness (SMI), with the Governor's approval and an effective date of January 1, 2015.

A second emergency regulation occurred as a result of the 2015 General Assembly direction to DMAS to modify the program's household income level to 60 percent of the Federal Poverty Level (FPL) using the MAGI income methodology, effective May 15, 2015.

DMAS has once again been directed to modify the household income level to 80 percent of the FPL requiring the need for a third emergency regulation effective July 1, 2016.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DMAS = Department of Medical Assistance Services.

GAP = Governor’s Access Plan.

SMI = Serious Mental Illness.

PTSD = Post-Traumatic Stress Disorder.

Emergency Authority

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. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Section 2.2-4011 (B) of the *Code of Virginia* states that agencies may adopt regulations in emergency 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](#). In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § [2.2-4012](#), such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. The 2016 *Acts of the Assembly*, Chapter 780, Item 306 XXX.1.b directed the agency to amend this demonstration project to modify eligibility provided through the project to individuals with serious mental illness to be effective July 1, 2016, and to provide the listed benefits.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled Governor’s Access Plan Demonstration Waiver for Individuals with SMI (2nd REV) (12 VAC 30-135-400; 12 VAC 30-135-420; 12 VAC 30-135-430) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Legal basis

Other than the emergency authority described above, 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 number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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.

During the 2016 session, the General Assembly directed the Department of Medical Assistance Services to "amend the Medicaid demonstration project described in paragraph XXX.1.a to increase the income eligibility for adults with serious mental illness from 60 to 80 percent of the federal poverty level effective July 1, 2016. The department shall have authority to implement necessary changes upon federal approval and prior to the completion of any regulatory process undertaken in order to effect such changes."

The GAP program is currently governed by emergency regulations, as the permanent regulations have not yet been finalized. Therefore, the only way to amend the GAP rules in accordance with the legislative mandate is through an additional emergency regulation.

With the Governor's approval, the agency Director adopts this emergency action pursuant to the *Code of Virginia* § 32.1-324(C).

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 action is to comply with the legislative mandate set out in the *2016 Acts of the Assembly*, Chapter 780, Item 306 XXX.1.b effective July 1, 2016.

This program was originally proposed to provide uninsured individuals who have diagnoses of serious mental illness access to medical and behavioral health care in order to improve their health and lives in their families and communities.

Need

Please describe 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.

According to national statistics, in 2014, it was estimated that 20% of adults (age 18 years or older) experienced some form of behavioral illness and approximately 4.1% of all Americans experience a serious mental illness (SMI). These figures are significantly higher among low income, uninsured populations. In addition, nearly 50% of individuals with SMI also have a co-occurring substance use disorder. Also, individuals with SMI have an increased risk for co-morbid medical conditions such as diabetes, heart disease, and obesity. Consequently, individuals with SMI have significantly decreased longevity, and in fact, die an average of 25 years earlier than individuals without SMI.

Enabling persons with SMI to access both behavioral health and primary health services will enhance the treatment they can receive, allow their care to be coordinated among providers, and significantly decrease the severity of their condition. With treatment, individuals with SMI and co-occurring or co-morbid conditions can recover and live, work, parent, learn and participate fully in their community.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

The affected regulations of this action are the Governor’s Access Plan Demonstration Waiver for Individuals with Serious Mental Illness (12 VAC 30-135-400; - 135-420; - 135-430)

CURRENT POLICY

The 2014 demonstration waiver program applied a standard of 95 percent of the Federal Poverty Level (95 percent of the FPL plus a 5 percent income disregard) limit on the incomes of persons applying for this assistance. This program also covers a range of medical and behavioral health services, including outpatient physician and clinic services, specialists, diagnostic procedures, laboratory procedures, and pharmacy services.

The 2015 General Assembly directed DMAS to modify the household income level to 60 percent of the Federal Poverty Level using the MAGI income methodology, and to provide continued eligibility for an additional year.

ISSUES

The 2016 General Assembly directed DMAS to modify this program again. The modification is to increase the income eligibility limit from 60 percent of the FPL to 80% of the FPL effective July 1, 2016.

RECOMMENDATIONS

To comply with the referenced legislative mandate, DMAS recommends the attached modifications to the GAP Demonstration Waiver for Persons with SMI for the Secretary's and Governor's consideration.

Current section number	Proposed new section number, if	Current requirement	Proposed change and rationale
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	applicable		
12 VAC 30-135-400(A)		Provides for incomes up to 60 % of the Federal Poverty Level (FPL) with a 5% household income disregard.	Provides for incomes up to 80% of the FPL using the MAGI income methodology (which includes a 5% household income disregard).
12 VAC 30-135-420 (A) and (E)		Provides for incomes up to 60% of the FPL with 5% household income disregard	Provides for incomes up to 80% of the FPL using the MAGI income methodology (which includes a 5% household income disregard).
12 VAC 30-135-430 (G)		Provides for incomes up to 60% of the FPL with 5% household income disregard	Provides for incomes up to 80% of the FPL using the MAGI income methodology (which includes a 5% household income disregard).

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been 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.

No alternative policies were afforded to DMAS by the legislative mandate.

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