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

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-50-130, 12 VAC 30-60-61, and 12 VAC 30-60-143
<b>Regulation title</b>	Amount, Duration and Scope of Medical and Remedial Services; and Standards Established and Methods Used to Assure High Quality of Care
<b>Action title</b>	Mental Health Services Program Changes to Ensure Appropriate Utilization
<b>Document preparation date</b>	May 21, 2010

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 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 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.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation

shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(ii) as discussed below.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled Amount, Duration and Scope of Medical and Remedial Services and Standards Established and Methods Used to Assure High Quality of Care: Mental Health Services Program Changes to Ensure Appropriate Utilization (12 VAC 30-50-130, 12 VAC 30-60-61, 12 VAC 30-60-143) and also authorize the initiation of the permanent regulatory 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) 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. Chapter 874 Item 297 YY of the 2010 Appropriation Act that implements the requirement to review Intensive In-Home services and Community Mental Health services in order ensure appropriate utilization and cost efficiency. This Budget Item included emergency regulatory authority.

**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 Department is promulgating this regulation to comply with Chapter 874, Item 297 YY of the 2010 Appropriation Act that implements the requirement to review Intensive In-Home services and Community Mental Health services in order to ensure appropriate utilization and cost efficiency.

**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.*

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The agency is proposing this regulatory action to comply with Chapter 874, Item 297 YY, of the 2010 Appropriation Act that gives DMAS authority to make programmatic changes in the provision of Intensive In-Home services and Community Mental Health services in order to ensure appropriate utilization and cost efficiency. In recent years the utilization of certain community-based mental health services has increased substantially. These changes are part of a review of the services to ensure that the services are appropriately utilized. Specifically, the 2010 Appropriations Act states:

**YY.** The Department of Medical Assistance Services shall make programmatic changes in the provision of Intensive In-Home services and Community Mental Health services in order ensure appropriate utilization and cost efficiency. The department shall consider all available options including, but not limited to, prior authorization, utilization review and provider qualifications. The Department of Medical Assistance Services shall promulgate regulations to implement these changes within 280 days or less from the enactment date of this act.

**Substance**

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

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The regulations affected by this action are Amount, Duration and Scope of Services and Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-50-130, 12 VAC 30-60-61 and 12 VAC 30-60-143): The services involved include Skilled nursing facility services, EPSDT, and family planning; services related to the EPSDT Program; community mental health services for children; and Mental Health Services Utilization

This action implements the results of a review of mental health services for children and adults, as well as changing the name of the Department of Mental Health, Mental Retardation, and Substance Abuse Services to the Department of Behavioral Health and Developmental Services. These sections also set forth rules and penalties related to the marketing of Medicaid mental health services Section 12 VAC 30-50-130 includes deleting the allowance for a week of service for Intensive In-Home services without prior authorization. This action also establishes in 12 VAC-30-60-61 the penalties to be applied to providers of intensive in home services for children and adolescents and therapeutic day treatments for children and adolescents for violating DMAS marketing restrictions. This is intended to eliminate claims processing issues that delayed payments to providers. Additionally, a statement that prior authorization is required for Day Treatment for Children and Adolescents was added to reflect the current procedures. Section 12 VAC 30-60-61 requires that specific assessment elements be included as part of the initial assessment for children’s mental health services. It requires that the initial assessment for intensive in-home services be conducted in the home and adopts caseload and supervision guidelines that were published by the Dept. of Behavioral Health and Developmental Services Licensing Division. The emergency action specifies staff ratios for Day Treatment for Children and Adolescents. The emergency action requires coordination with providers of case management.

## 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.*

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This action is based upon Chapter 874, Item 297 YY, of the 2010 Appropriation Act, giving DMAS authority to make programmatic changes in the provision of Intensive In-Home services and Community Mental Health services in order ensure appropriate utilization and cost efficiency. DMAS chose to implement these changes to add consistent requirements for services to promote the quality of those services.

## 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.*

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The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to **Catherine Hancock, Office of Behavioral Health, 600 East Broad Street, Richmond, Virginia, 23219, and** e-mail [Catherine.Hancock@dmass.virginia.gov](mailto:Catherine.Hancock@dmass.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

## Participatory approach

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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DMAS is using the participatory approach to develop this regulatory scheme. Public and private stakeholders were included in the development of the changes.

### 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.*

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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.