



Virginia
Regulatory
Town Hall

town-
hall.virginia.gov

Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC 30-120-360 and 12VAC 30-120-370 (Amend)
Regulation title	Medallion II (Part VI);
Action title	Add Foster Care/Adoption Assistance Children in Managed Care
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 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action requires children in foster care/adoption assistance categories to be enrolled in managed care. This regulatory action is necessary to interpret the law and also to protect the health, safety, and welfare of Medicaid beneficiaries who are citizens of the Commonwealth. Children enrolled in foster care or adoption assistance have previously been exempted from enrollment into managed care, due primarily to the lack of managed care delivery systems statewide.

At the request of the City of Richmond Department of Social Services, beginning December 1, 2011, DMAS implemented a pilot program adding foster care children in Richmond City into managed care. To date, this program has shown great success and DMAS is planning for expansion of this program until all foster care/adoption assistance children statewide are enrolled in managed care. Requiring children in the foster care and adoption assistance categories to enroll in managed care will enhance the coordination of services and the care received, affording easier access to needed specialized care services by children who often have special medical care needs. This change will treat these children the same as all other children enrolled in Medicaid.

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 regulations entitled Add Foster Care and Adoption Assistance Children in Managed Care (12 VAC 30-120-360 and 12 VAC 30-120-370) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the *Code of Virginia* § 2.2-4012.1, of the Administrative Process Act.

/s/ 9/14/2012

Date

/s/ Cynthia B. Jones

Cynthia B. Jones, 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 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] provides governing authority for payments for services.

Chapter 3, Item 307 DDD of the *2012 Acts of the Assembly* also provides:

"The Department of Medical Assistance Services 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 allow foster care children, on a regional basis to be determined by the department, to be enrolled in Medicaid managed care (Medallion II). "

DMAS is relying on its general authority, found in the *Code* § 32.1-325(A)(1), to also include Adoption Assistance children. Including Adoption Assistance children, along with Foster Care children, treats similarly situated individuals the same.

As permitted by Executive Order 14 (2010), this regulatory action is necessary in order to interpret the applicable federal laws which created the managed care organization health care delivery system (*Social Security Act* § 1915(b)). It also implements this administration's directive to DMAS to 'expand principles of care coordination to all geographic areas, populations and services under programs administered by the department'. (*2012 Appropriations Act*, Chapter 3, Item 307 RR)

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 the regulation 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.

Virginia includes most Medicaid beneficiaries in risk-based managed care; however, children in foster care and adoption assistance are currently excluded. This exclusion was based on the fact that managed care service delivery did not, until recently, cover the entire Commonwealth.

DMAS has realized numerous health care and budgetary benefits from covering traditional acute care services through a risk-based capitated managed care program. Expanding the managed care population to include foster care and adoption assistance children is consistent with the agency's effort to improve access and treatment, coordinate care, reduce inappropriate utilization, and provide budget stability with tangible quality goals. Including more previously-excluded populations in managed care is also a goal of this administration. There are no disadvantages to the health, safety, and welfare of citizens in this change.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process for this proposed regulatory change was selected because this change is not expected to be controversial. The inclusion of foster care/adoption assistance children in managed care is not expected to be controversial as the Virginia Department of Social Services is in agreement and has even collaborated with DMAS during the earlier pilot project. The pilot project showed managed care services to be quite beneficial to these participants. This change will help to protect the health, safety, and welfare of the affected Medicaid beneficiaries who are also citizens of the Commonwealth.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The regulations which are affected by this action are the Medallion II (Part VI, 12 VAC 30-120-360 and 120-370).

Foster Care and Adoption Assistance children were originally included in the managed care system, as early as 1996. Experience at that time indicated that, due to the young peoples' frequent changes of addresses (moving into/out of MCO service areas), being restricted for a period of time to a managed care organization was not practical. This difficulty was compounded by the fact that, at that time, there were large geographic areas of the Commonwealth which lacked operational MCOs. Consequently, these two groups of children were excluded, by regulatory action, from the managed care system. Now that the managed care system is statewide, this complication has been eliminated.

Furthermore, a recent pilot study with the City of Richmond DSS found that moving approximately 300 foster care children into the Medallion II managed care delivery system was feasible and advantageous for children in foster care as well as those receiving adoption assistance. These children often have special health care needs which are met better by managed care organizations rather than by separate, freestanding, fee-for-service providers. Managed care organizations have easier access to specialty physician services which these young people often need.

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 primary advantage of this change is that children who are in foster care or who are receiving adoption assistance are expected to receive improved long term quality of care as a result of having a more consistent ‘medical home’. This is particularly important for these populations as they can have histories of neglect and abuse which increases their physical, mental, and emotional vulnerabilities and medical care needs. There are no disadvantages for these populations to being included in MCOs.

The affected MCOs will experience small increases in their patient numbers for which they will receive Medicaid capitation rates. There will be no disadvantages for the MCOs.

For the public and the Commonwealth, there are no identified disadvantages. The advantage to the Commonwealth is that these most vulnerable children, for whom the Commonwealth is legally responsible, will be receiving better health care more appropriate to their medical needs as well as the coordination of those services.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

These changes will not affect a particular locality uniquely as they will apply statewide.

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.

The only regulatory alternative to this change is to not permit foster care/adoption assistance children to receive their medical services from MCOs. Since 1997, these children have been receiving their needed medical care through Medicaid's fee-for-service system. This has been demonstrated to be a less than satisfactory system for individuals having significant physical, mental, and emotional care needs.

This change will not create new reporting requirements for managed care organizations. The affected MCOs are not considered as small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Savings that may result from foster care and adoption assistance children being in managed care are not expected to be significant. DSS states that there are approximately 4600 children in these two categories.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no projected costs for localities anticipated as a result of these suggested changes.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The benefits to the foster care/adoption assistance children will be: (i) care coordination for youth who usually need specialized services; (ii) increased resources for foster care parents such as 24-hour nurse helplines; (iii) increased provider resources as MCOs are able to negotiate agreements and rates for services; (iv) improved identification of these children within DMAS' data system leading to improved monitoring of outcomes and services.</p> <p>These changes are not anticipated to adversely affect businesses, localities or other entities.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>DMAS contracts with six managed care organizations, with a total enrollment as of June 2012 of 573,759 members by MCO as follows: Anthem (211,748); Optima (148,137); Virginia Premier (139,692); CareNet (28,004); Amerigroup (41,721); MajestaCare (4,457).</p> <p>The total unduplicated number of providers for each MCO is: Anthem (30,288); Optima (27,866); Virginia Premier (20,395); CareNet (12,948); Amerigroup (14,861); and MajestaCare (6,921).</p>

<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected costs for affected individuals, businesses, or other entities anticipated as a result of these proposed regulation changes. These changes will result in the current MCOs having a few more individuals in their client caseloads with the associated shifting of the costs of their care from the fee-for-service system to the MCOs.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The benefit to foster care/adoption assistance children will be improved care coordination and better/easier access to needed specialized care services, such as behavioral health, nursing and assistive technology services.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The only alternative to managed care for these categories of children would be to continue to provide fee-for-service services. As a result of the pilot project conducted with Richmond City Department of Social Services, DMAS has already established that these special children clearly benefit from the managed care environment.

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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-120-360	N/A	Definitions related to Medallion II managed care program	Removed definition related to change as term is not used elsewhere in the regulation.
12 VAC 30-120-370		<p>Contains mandatory MCO enrollment except if specifically excluded.</p> <p>Reference to the Department of Mental Health, Mental Retardation and Substance Abuse Services pre-dates the agency's name change.</p>	<p>Foster care/adoption assistance children are being removed from the exclusion list which, therefore, requires them to participate in managed care.</p> <p>Agency name is updated as a technical correction.</p>