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Emergency Regulation Agency Background Document

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| Agency name | DEPT OF MEDICAL ASSISTANCE SERVICES (DMAS) |
| Virginia Administrative Code (VAC) citation(s) | _12_ VAC_30__ -_135__ |
| Regulation title(s) | Demonstration Waivers: Individuals with Serious Mental Illness (SMI) |
| Action title | GAP Demo Waiver for Individuals with SMI (REV) |
| Date | |

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 GAP Demo Waiver for Individuals with Serious Mental Illness (SMI), with the Governor's approval on December 10, 2014, effective January 1, 2015. The original program provided specified benefits to qualifying individuals who were uninsured. To qualify, these individuals had to meet the GAP serious mental illness criteria as well as the financial and nonfinancial eligibility criteria. The serious mental illness criteria involved specific diagnoses (for example, schizophrenia, bipolar disorders, PTSD), specific duration of illnesses, specific levels of impairment, and consistent need for help in accessing health care services. Other criteria were: (i) be an adult between the ages of 21 and 64 years; (ii) be a U.S. citizen or lawfully residing alien; (iii) be a resident of the Commonwealth; (iv) be uninsured; (v) be ineligible for any state or federal health insurance programs; (vi) have household incomes below 95 percent of the Federal Poverty Level with a 5

percent income disregard; (vii) not be current residents of a nursing facility, mental health facility or penal institution. A wide range of benefits, including outpatient physician and clinic services, specialists, diagnostic procedures, laboratory procedures, and pharmacy services were provided through this demonstration program.

The 2015 General Assembly, in the *2015 Acts of the Assembly*, Chapter 665, Item 301 LLLL, directed DMAS to modify this program's household income level to 60 percent of the Federal Poverty Level (FPL), while retaining the additional 5% household income disregard, and to provide continued eligibility, for one more year, to persons whose household incomes are between 61% and 100% of the FPL. The following benefits are to be provided: (i) primary care office visits including diagnostic and treatment services performed in the physician's office, (ii) outpatient specialty care, consultation, and treatment, (iii) outpatient hospital including observation and ambulatory diagnostic procedures, (iv) outpatient laboratory, (v) outpatient pharmacy, (vi) outpatient telemedicine, (vii) medical equipment and supplies for diabetic treatment, (viii) outpatient psychiatric treatment, (ix) mental health case management, (x) psychosocial rehabilitation assessment and psychosocial rehabilitation services, (xi) mental health crisis intervention, (xii) mental health crisis stabilization, (xiii) therapeutic or diagnostic injection, (xiv) behavioral telemedicine, (xv) outpatient substance abuse treatment services, and (xvi) intensive outpatient substance abuse treatment services. Care coordination, Recovery Navigation (peer supports), crisis line and prior authorization for services shall be provided through the agency's Behavioral Health Services Administrator.

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 2015 *Acts of the Assembly*, Chapter 665, Item 301 LLLL 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, 2015, and to provide the listed benefits.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled GAP Demo Waiver for Individuals with SMI (REV) (12 VAC 30-135-400; 12 VAC 30-135-420; -135-430; -135-450) 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.

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 *2015 Acts of the Assembly*, Chapter 665, Item 301 LLLL effective July 1, 2015.

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 the past year, it is estimated that 20% of adults (age 18 years or older) experienced some form of behavioral illness and approximately 4.1% of 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.

The tragedy is that SMI and substance use disorders are the most common co-morbid medical conditions and are all highly treatable. Effective treatment is available and people can recover. Without access to such treatment, however, individuals with SMI are often unnecessarily hospitalized, may be unable to find and sustain employment, struggle with affordable and available housing, become involved with the criminal justice system, and suffer with social and interpersonal isolation.

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 regulations that are affected by this action are the Governor's Access Plan Demo Waiver for Individuals with Serious Mental Illness (12 VAC 30-135-420; -135-430; -135-450).

CURRENT POLICY

Currently, this demonstration waiver program applies a standard of 100 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 wide range of medical and behavioral health services, including outpatient physician and clinic services, specialists, diagnostic procedures, laboratory procedures, and pharmacy services.

ISSUES

The 2015 General Assembly directed DMAS to modify this program in Chapter 665, Item 301 LLLL. The modifications were: (i) reduce the 100% of the Federal Poverty income level to 60% of the FPL; (ii) include telemedicine in the covered services.

RECOMMENDATIONS

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

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|-------------------------------|--|--|--|
| 12 VAC 30-135-400(A) | | Provides for incomes up to 100% of the Federal Poverty Level (FPL) with a 5% household income disregard. | Provides for incomes up to 60% of the FPL (plus a 5% household income disregard) |
| 12 VAC 30-135-420 (A) and (E) | | Provides for incomes up to 95% of the FPL with 5% household income disregard | Provides for incomes up to 60% of the FPL (plus a 5% household income disregard) |
| 12 VAC 30-135-430 (G) | | Provides for incomes up to 95% of the FPL with 5% household income disregard | Provides for incomes up to 60% of the FPL (plus a 5% household income disregard) |
| 12 VAC 30-135-450 (C) | | Provides for specified services. | Provides for services as specified in the legislative mandate. |
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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.