



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Mental Health Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-170-10 et seq.
Regulation Title:	Regulations for the Certification of Case Management
Action Title:	Amend Regulation
Date:	October 30, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation establishes certification requirements for Medicaid-funded targeted mental health and mental retardation case management services in accordance with the State Plan for Medical Assistance. The regulation describes the application process for seeking such certification from the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department) and establishes qualifications for individual case managers. The regulation was intended to ensure that case managers providing Medicaid-funded case management services possess the skills, knowledge and abilities necessary to provide these services to persons with mental illness and mental retardation.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

According to Virginia's Office of the Attorney General (OAG), the authority for this regulation appears in Virginia Code § 37.1-182.2 (ii). (The current regulation only lists the original statutory authority for the regulation, the 1990 Appropriation Act, which preceded enactment of § 37.1-182.2.) The legal authority for the regulation is permissive.

The Code permits the Department, subject to regulations promulgated by the Board, to "... certify the qualifications of... (ii) providers of State Plan Option Targeted Case Management Services..." In correspondence dated August 21, 2000, the OAG advised the Department that the current regulation exceeds the minimum requirements of the statutory mandate as follows:

- a. *The regulation prohibits any "person" from establishing, conducting, maintaining or operating case management services without being certified. 12 VAC 35-170-30. Since the statute gives the Department only the authority to certify the qualifications of providers to DMAS [Department of Medical Assistance Services], this provision exceeds the minimum requirements of the statutory mandate.*
- b. *The regulation addresses certifying "facilities" rather than certifying qualifications of providers. 12 VAC 35-170-40. Additionally, the regulation requires certain conduct by "facilities", 12 VAC 35-170-50. Since the statute gives the Department only the authority to certify the qualifications of providers to DMAS, these provisions exceed minimum requirements of the statutory mandate.*
- c. *The regulation states that the Commissioner "may certify a facility for the provision of case management services... only after he is satisfied that all individuals providing services meet applicable KSAs." 12 VAC 35-170-70. Since the statute gives the Department only the authority to certify the qualifications of providers to DMAS, these provisions exceed the minimum requirements of the statutory mandate.*
- d. *The regulation states that the Commissioner "may issue a certification to a facility ...for any period not to exceed three years..." 12 VAC 35-170-80. Since the statute gives the Department only the authority to certify the qualifications of providers to DMAS, this provision exceeds the minimum requirements of the statutory mandate.*

- e. *The regulation addresses suspension or revocation of a facility’s certification. 12 VAC 35-170-90, 12 VAC 35-170-100, 12 VAC 35-170-110, 12 VAC 170-120. Since the statute gives the Department only the authority to certify the qualifications of providers to DMAS, this provision exceeds minimum requirements of the statutory mandate.*
- f. *The regulation states that each applicant or certified facility shall permit ongoing inspections. 12 VAC 35-170-130. Since this statute gives the Department only the authority to certify the qualifications to DMAS, the provision exceeds the minimum requirements of the statutory mandate.*
- g. *The regulation sets out a list of additional “Requirements” for facilities. 12 VAC 35-170-160. This listing is an almost verbatim repetition of the listing contained in an earlier provision of the regulation. (12 VAC 35-170-70). Additionally, since the statute gives the Department only the authority to certify the qualifications of providers to DMAS, the provision exceeds the minimum requirements of the statutory mandate.*
- h. *The regulation includes, without any corresponding VAC numbering, two sample position specifications. The purpose of these position specifications is unclear. However, since the statute gives the Department only the authority to certify the qualifications of providers to DMAS, the provision exceeds the minimum requirements of the statutory mandate.*

Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The notice of this periodic review was published in the Virginia Register on July 31, 2000. The notice requested public comment on the performance and effectiveness of the regulation in meeting stated goals. The Department also sent notice of this review to approximately 150 interested persons and organizations, including advocacy groups, state facilities for persons with mental retardation and mental illness, and community services boards. The following is a summary of comments received in response to this request.

County of Loudoun Community Services Board: This respondent commented on three aspects of the regulation.

1. The regulation should provide guidance regarding minimum and maximum caseload expectations for individual case managers. This caseload guidance should be included in definitions and other parts of the regulation.

Agency Response: It appears that the current statutory authority would not allow this regulation to include provisions establishing limitations for caseload size. As indicated by the OAG, the statute gives the Department only the authority to certify the qualifications of case management providers to DMAS. Therefore, it would be outside the scope of legal authority to amend this regulation to establish expectations for minimum and maximum caseloads.

2. “At least for MR [mental retardation], the regulations should address the separation of case management services and service provision.”

Agency Response: The purpose of this regulation is to establish qualifications for case managers. It is not intended to define the scope of case management services or establish the structure for service delivery. Therefore, the Department does not recommend changing the regulation in response to this comment.

3. It is not practical to require case managers to have a valid Virginia driver’s license as staff may be residents of the state of Maryland.

Agency Response: The Department intends to propose revisions to the regulation to establish appropriate qualifications for the certification of case management “providers” consistent with the law. This process should include updating and revising qualifications to reflect current practice and realistic expectations for staff.

Henrico Area Mental Health & Mental Retardation Services: This respondent indicates that the knowledge, skills and abilities required for case managers, which are provided in the regulation, are comprehensive and relevant and that the certification process described in the regulation is straightforward. This respondent provided the following additional comments.

It is inappropriate to use the term “facility” to describe the place where case management is delivered. Case management services are provided by community services boards (CSBs) rather than by a “facility.” The respondent also notes that the definition of “facility” in the regulation does not include training centers or CSBs, which are two key components of the mental health/mental retardation system.

Agency Response: The statutory authority for this regulation permits the Department to certify the qualifications of “providers” of certain case management services. The Department generally agrees with this respondent and proposes to amend the current provisions of this regulation to reflect this legal authority to certify “providers” that deliver case management service rather than “facilities.” Also, as suggested by this respondent, the Department intends to consider revising and updating the definitions in this regulation to reflect current practice and legal authority.

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The major goals of the regulation are:

- 1 To assure provision of quality care and efficient use of Medicaid resources devoted to the provision of Medicaid mental health and mental retardation targeted case management services.
2. To clearly articulate a case management certification process and provider requirements that assure services are provided by qualified individuals.
3. To ascertain whether a regulatory certification process is the least intrusive and costly approach for ensuring the qualifications of providers of Medicaid targeted case management services.

According to the OAG, this regulation exceeds minimum requirements of the statutory mandate. Therefore, the agency proposes to consider alternative approaches that may better meet the stated goals. It appears that certain requirements are out-of-date and require clarification in order to conform to the legal mandate, current practice and to facilitate the provider certification process (e.g. definitions, minimum provider qualifications). However, it is the consensus of the participants in this review that the regulations are essential to ensure the quality of care for persons who receive these case management services. In addition, the Department of Medical Assistance Services (DMAS) relies on the certification process, which is established in this regulation, to help determine the eligibility of providers for reimbursement of mental health and mental retardation targeted case management services. DMAS regulations (12 VAC 30-130-570) require providers of mental health and mental retardation case management services to be certified by DMHMRSAS in order to qualify as providers of such services for DMAS reimbursement. Therefore, this regulation should be retained and amended to include the needed updates and clarifications that are consistent with current legal mandates and DMAS regulations.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Department and the State Board have conducted an analysis of the applicable law and the existing regulation and have considered several alternatives for resolving the issues that have been identified in this review:

Alternative 1 – No regulation. This alternative was rejected. The participants in this review determined that this regulation is necessary to assure consistency and quality of care for persons receiving case management services. There is no other means currently in place to provide for the regulatory oversight of providers of Medicaid targeted case management services.

Alternative 2 – No change in the regulation. This alternative was rejected. This regulation has not been amended since 1992. Provider qualifications and definitions should be updated to conform to the scope of the legal mandate, current practice and facilitate the certification process.

Alternative 3 – Amend the regulation. This alternative was accepted. The amendment is necessary to reflect current practice and to clarify existing provisions, consistent with the current law.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department and the State Board recommend “Alternative 3” to amend the regulation. This amendment is needed to bring the regulation into compliance with the existing legal mandate and to update certain provisions. The Department and State Board have determined, based on this periodic review, that this regulation provides the means for an essential regulatory oversight function and should be retained with amendments.

Substance

Please detail any changes that would be implemented.

The revisions would not include substantial changes to the format of the regulation. However, significant changes are expected to be made to the content of the regulations. The specific sections of the current regulation, which were identified by the OAG as exceeding minimum requirements of the statutory mandate, would be revised as necessary to ensure consistency with the scope of this statutory mandate. In addition, the amendment would include updates to the definitions, process and qualifications for the certification of case management providers, to reflect changes in practice, to improve clarity or to ensure compliance with the law.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

This regulation outlines the process and qualifications necessary for providers to request certification to provide Medicaid targeted case management services in accordance with the State Plan for Medical Assistance. This regulation, with the anticipated amendments, should improve assurance to consumers and their families that case management providers are qualified to provide such services. This regulation should have no impact on the rights of parents in educating, nurturing or supervising their children. The regulation should have no discernable impact on marital commitment or family income.