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Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -120
Regulation title	Medallion II
Action title	MCO Rural Exception
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 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This action conforms the *Virginia Administrative Code* to changes that have been approved by the Centers for Medicare and Medicaid Services (CMS) to the Virginia Medicaid managed care waiver program entitled Medallion II. The approved changes concern the addition of the rural exception to the Medallion II program in areas federally designated as 'rural' where there is only one contracted MCO. The approved changes also provide for several organizational improvements and the updating of internal citations.

Legal basis

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., the 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 and 325, 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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This regulatory action is not essential to protect the health, safety, and welfare of the citizens of the Commonwealth. However, it does protect Medicaid recipients in rural areas of the Commonwealth where only one managed care program operates. In such situations, all Medicaid recipients, who otherwise do not meet any of the managed care exemption reasons, are required to participate with the operating managed care program for their locality. Implementation of the rural exception option allows Virginia to adhere to the mandatory managed care requirements as set forth in the 1915(b) Managed Care Waiver.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The state regulations that are affected by this action are Medallion II (12 VAC 30-120).

Currently, the Medallion II regulations do not provide for a rural exception. Until recently, managed care programs operated throughout the state with the MEDALLION PCCM program (MEDALLION Primary Care Case Management) as the sole program in the far southwest, the Medallion II program with one MCO option and MEDALLION PCCM program in Roanoke and the surrounding areas, and the Medallion II program with 2 or more contracted MCOs in all other localities. Newly assigned recipients residing in Medallion II areas are afforded a 90-day period of time in which to re-consider the MCO/plan to which they have been assigned. If they elect to switch to the alternative MCO/plan during this 90-day period, they are permitted to do so with no penalty. After the end of the 90-day period, however, they are locked in to receiving care from that MCO until the next open enrollment period.

Revisions to 12 VAC 30-120-360, 12 VAC 30-120-370, and 12 VAC 30-120-380 are being requested to bring the *Virginia Administrative Code* in accordance with the CMS-approved 1915(b) Managed Care Waiver. It is under this waiver that both the Medallion II (MCO) program and MEDALLION (PCCM) program operate. The waiver is renewed every two years

with amendments requested, as needed. The proposed regulation changes in this document are specific to the Medallion II (MCO) program.

The amendment to include the “rural” exception option (also referred to as the “rural option”) to DMAS’ 1915(b) waiver application (section A.1.C.3) was submitted to CMS on 8/13/09, and subsequently approved, for an effective date of 10/1/09. The need for this amendment to the waiver, pursuant to 42 CFR 438.52 (b), resulted from Virginia Premier Health Plan exiting from Culpeper County and leaving only one remaining contracted health plan (AMERIGROUP Community Care) in the locality. The rural exception as provided for in these regulations is defined as a federally-designated area where qualifying Medallion II recipients are mandated to enroll in the one contracted managed care organization.

Section 12 VAC 30-120-360 adds a definition for the rural exception option, as well as for retractions as referenced in 12 VAC 30-120-370 (G). Other noted changes provide clarification to policies surrounding the rural exception area (e.g. pre-assignment and open enrollment) and point to the section 1915(b) Managed Care Waiver and Medallion II Contract for terminology corrections or clarification in other areas of these regulations. The name of a sister state agency has been updated from the previous title of Department of Mental Health, Mental Retardation and Substance Abuse Services to the new title of Department of Behavioral Health & Developmental Services.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no advantages or disadvantages to the public in this regulatory action. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change. The recommended regulatory changes to 12 VAC 30-120 maintains Virginia’s adherence to the mandatory managed care requirements set forth in the 1915(b) Managed Care Waiver; allows for Medicaid recipients of the Commonwealth to continue to receive comprehensive, cost effective, quality health care services; and recognizes the need for the managed care programs to keep pace with the changing needs of the state.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are 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.

The proposed regulatory changes to 12 VAC 30-120 meet requirements set forth by the 1915(b) Managed Care Waiver and does not create any standards 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.

The regulatory change to add the rural exception option into 12 VAC 30-120 is being implemented at this time for the Culpeper area. Virginia Premier Health Plan exited Culpeper on 10/1/09 leaving only one MCO option. It is anticipated with the changes generated by federal health care reform, as well as changes to the face of health care within the State, that the rural exception option may be utilized more in the future for any locality that would qualify as “rural.”

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Patti Davidson, 600 East Broad Street, Richmond, Virginia 23219, Fax (804) 786-1680, email Patti.Davidson@dmas.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 date of the public comment period.

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.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	Undeterminable. The regulation gives DMAS the flexibility to make the most cost effective decision.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	The regulation would allow one MCO to serve all eligible members in a rural county. Individuals would have to continue to receive services through managed care.
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.	Currently there are 5 MCOs furnishing services to Virginia Medicaid members. The number of individuals affected would depend on the circumstances.
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 do 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.	No change in costs for affected individuals or businesses.
Beneficial impact the regulation is designed to produce.	Prevent disruption of the managed care service model.

The budget impact of the regulatory changes addressed in this document is undeterminable at this time and would depend on the circumstances and specific localities affected by the rural exception option.

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.

There are no viable alternatives to these proposed regulation changes. These changes are to bring Virginia’s regulations into alignment with the CMS-approved 1915(b) Managed Care Waiver. This includes the addition of the new “rural” exception option. Several other minor changes are to correct the terminology used and provide clarification.

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.

There are no viable alternatives to these proposed regulation changes. These changes are to bring Virginia's regulations into alignment with the CMS-approved 1915(b) Managed Care Waiver. This includes the addition of the new "rural" exception option.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

DMAS' Notice of Intended Regulatory Action was published in the (2/1/10) Virginia Register (VR 26:11 (volume: issue numbers)) for its public comment period from 02/01/10 to 03/03/10. No comments were received during the public comment period.

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 detail 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 if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the 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, rationale, and consequences
12 VAC 30-120-360	Same	This section provides definitions for the Medallion II program.	Add definition of rural exception, a managed care option for recipients in a locality with only one contracted MCO and no other managed care program. Also added "PCP of record" as referenced in 12 VAC30-120-370D and "retractions" as referenced in 12 VAC 30-120-370G.
12 VAC 30-120-370 B	Same	Section B lists the exclusion reasons from mandatory managed care.	Add documentation to specify that the list in 12 VAC 30-120-370 B is not all inclusive and to point to the 1915(b) Managed Care Waiver for a comprehensive list.
12VAC 30-120-370 B 13	Same	Agency's previous name was Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).	Agency Name changed to Department of Behavioral Health and Developmental Services (DBHDS)
	12VAC 30-120-370 D		Provides for enrollment in MCO rural exception areas.
12 VAC 30-120-370 F	12 VAC 30-120-370 G	Subsection F items 1-5 outline the assignment process for Medallion II recipients	(New) subsection G item 3 is being added to provide for the rural exception requirement and DMAS' needs to administratively respond to the fluctuating MCO market. Item # 4 changed to item # 5 and is being modified to provide clarification for enrollments in one MCO and PCCM areas. Item #5 changed to item #6 and is being modified to include changes or "retractions" as defined in 12VAC 30-120-360.

12VAC 30-120-370 H	12 VAC 30-120-370 I		Section H, changed to Section I, omits reference of open enrollment for “all” Medallion II participants, and provides clarification that recipients in area designated as “rural” exception areas do not have an open enrollment period.
12 VAC 30-120-370 I	12 VAC 30-120-370 J	Language already exists in 12 VAC 30-120-370 C	Omission of last paragraph due to duplication. This paragraph is found in 12 VAC 30-120-370 C.
12VAC 30-120-370 I. 6	12VAC 30-120-370 J 6	Outlines the criteria for “disenrollment for cause.” Disenrollment is specifically defined in 12 VAC 30-120-360 as the process of changing from one MCO to another MCO or to the PCCM.	Correction to the terminology in item 6. Individuals who meet one of the exclusions in subsection B shall be excluded (not disenrolled) as appropriate by DMAS.