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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-50-420, 12 VAC 30-50-430, 12 VAC 30-50-491, 12 VAC 30-60-143, 12 VAC 30-60-185
VAC Chapter title(s)	Amount, Duration, and Scope of Medical and Remedial Care Services & Standards Established and Methods Used to Assure High Quality Care
Action title	Mental Health and Substance Use Case Management
Date this document prepared	January 13, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action makes the following changes:

- Removes the limit for individuals in institutions for mental diseases (IMDs) to only be able to receive substance use case management at the time of discharge twice in a 12-month period. On March 30, 2016, the Centers for Medicare & Medicaid Services (CMS) issued the Medicaid Mental Health Parity Rule. The overall objective of the Medicaid Mental Health Parity Rule is to ensure that accessing mental health and substance use disorder services is no more difficult than accessing medical/surgical services. To comply with the Medicaid Mental Health Parity Rule, DMAS must remove the limit on substance use case management for individuals in

IMDs. The federal Mental Health Parity regulation can be found in 42 CFR 438.910(b)(1). There are no costs associated with this change. DMAS' contracted managed care organizations and the Department's Behavioral Health Services Administrator (BHSA) are not currently applying any limits on substance use case management services for individuals in IMDs.

- Aligns the state regulations with 42 CFR 441.18(a)(8)(vii) and documents DMAS practice by specifying that reimbursement is allowed, provided two conditions are met, for substance use and mental health case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions. The two conditions include: (1) the case management services may not duplicate other services provided by the institution and (2) the case management services are provided to the individual 30 calendar days prior to discharge. For individuals ages 22 - 64, case management services rendered during the same month as the admission in an IMD are reimbursable as long as the case management services are rendered prior to the date of the admission or past the date of discharge from the IMD. There are no costs associated with these changes. These changes detail existing DMAS practices, rather than changes in practice.

- Clarifies Individual Service Plan (ISP) review timeframes and grace periods, including revising the time period for grace periods from "months" to "calendar days". There are no costs associated with these changes.

- Clarifies that Certified Substance Abuse Counselor (CSAC)-Supervisees can bill for substance use case management services to document DMAS current practices, rather than changes in practice. There are no costs associated with these changes.

- Consolidates subsections B and C in 12VAC30-60-185 and removes duplicative language. There are no costs associated with these changes.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

BHSA=Behavioral Health Services Administrator
CMS=Centers for Medicare & Medicaid Services
CSAC=Certified Substance Abuse Counselor
DMAS=Department of Medical Assistance Services
IMD=Institutions for Mental Diseases
ISP=Individual Service Plan

Statement of Final Agency Action

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 Regulatory Review Summary entitled "Mental Health and Substance Use Case Management" 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 of the Administrative Process Act.

1/13/2022

Date

Karen Kimsey

Karen Kimsey, Director
Dept. of Medical Assistance Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

These regulatory changes are expected to be non-controversial. Removing the limit on substance use case management for individuals in IMDs is expected to be non-controversial because DMAS is doing so to comply with the Medicaid Mental Health Parity Rule. Aligning the state regulations with 42 CFR 441.18(a)(8)(vii) and documenting DMAS practices is also expected to be non-controversial because the changes detail existing practices, rather than changes in practice. Clarifying ISP review timeframes and grace periods, and clarifying that CSAC-Supervisees can bill for substance use case management services, is expected to be non-controversial because these changes document existing DMAS practices, rather than changes in practices. There are no reduction in services associated with these changes.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

The federal Mental Health Parity regulation can be found in 42 CFR 438.910(b)(1).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of the action to remove the limit on substance use case management for individuals in IMDs is to comply with the Medicaid Mental Health Parity Rule. On March 30, 2016, CMS issued the Medicaid Mental Health Parity Rule. The overall objective of the Medicaid Mental Health Parity Rule is to ensure that accessing mental health and substance use disorder services is no more difficult than accessing medical/surgical services. To comply with the Medicaid Mental Health Parity Rule, DMAS must remove the limit on substance use case management for individuals in IMDs. The federal Mental Health Parity regulation can be found in 42 CFR 438.910(b)(1).

The purpose of aligning the state regulations with 42 CFR 441.18(a)(8)(vii) and documenting existing DMAS practices is to specify that reimbursement is allowed, provided two conditions are met, for case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions. The two conditions include: (1) thecase managements service may not duplicate other services provided by the institution and (2) thecase management services are provided to the individual 30 calendar days prior to discharge. For individuals ages 22 - 64, case management services rendered during the same month as the admission in an IMD are reimbursable as long as the case management services were rendered prior to the date of the admission or past the date of discharge from the IMD.

The purpose of clarifying mental health and substance use case management services ISP review timeframes and grace periods is to codify DMAS current practices that reviews are due by the end of the month following the 90th calendar day from when the last review was completed, and that, if needed, a grace period will be granted up to the last day of the next month. Likewise, updating the substance use case management utilization review regulations to clarify that CSAC-Supervisees can bill Medicaid for substance use case management services does not reflect a change in practice, but rather aligns DMAS regulations with the Department's existing practices.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The regulation changes to remove the limit on substance use case management for individuals in IMDs are to comply with the Medicaid Mental Health Parity Rule. The federal Mental Health Parity regulation can be found in 42 CFR 438.910(b)(1).

Specifying that reimbursement is allowed, provided two conditions are met, for mental health and substance use case management services for Medicaid-eligible individuals who are in institutions, with the exception of individuals between ages 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions, aligns DMAS regulations with 42 CFR 441.18(a)(8)(vii) and documents the Department's existing practices.

Clarifying ISP review timeframes and grace periods, and clarifying CSAC-Supervisees can bill for substance use case management services, document existing DMAS practices, rather than changes in practices.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or

regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no costs associated with these regulatory changes.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None.
For all agencies: Benefits the regulatory change is designed to produce.	The benefit of removing the limit on substance use case management for individuals in IMDs is compliance with the Medicaid Mental Health Parity Rule. Specifying that reimbursement is allowed, provided two conditions are met, for case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions, aligns DMAS regulations with existing practice and with 42 CFR 441.18(a)(8)(vii). Clarifying ISP review timeframes and grace periods, and clarifying that CSAC-Supervisees may bill for substance use case management services, document existing DMAS practices, rather than changes in practices.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None.
Benefits the regulatory change is designed to produce.	The benefit of removing the limit on substance use case management for individuals in IMDs is compliance with the Medicaid Mental Health Parity Rule. Specifying that reimbursement is allowed, provided two conditions are met, for case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions, aligns DMAS regulations with existing practice and with 42 CFR 441.18(a)(8)(vii). Clarifying ISP review timeframes and grace periods, and clarifying that CSAC-Supervisees may bill for substance use case management services, document existing DMAS practices, rather than changes in practices.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	None.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None.
Benefits the regulatory change is designed to produce.	The benefit of removing the limit on substance use case management for individuals in IMDs is compliance with the Medicaid Mental Health Parity Rule.

	Specifying that reimbursement is allowed, provided two conditions are met, for case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions, aligns DMAS regulations with existing practice and with 42 CFR 441.18(a)(8)(vii). Clarifying ISP review timeframes and grace periods, and clarifying that CSAC-Supervisees may bill for substance use case management services, document existing DMAS practices, rather than changes in practices.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternatives can achieve the purpose of removing the limit for individuals in IMDs to only be able to receive substance use case management at the time of discharge twice in a 12-month period. To comply with the Medicaid Mental Health Parity Rule, DMAS must remove the limit on substance use case management for individuals in IMDs. The federal Mental Health Parity regulation can be found in 42 CFR 438.910(b)(1).

No alternatives can achieve the purpose of specifying that reimbursement is allowed, provided two conditions are met, for case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions, which will align DMAS regulations with existing practice and with 42 CFR 441.18(a)(8)(vii).

No alternatives can achieve the purpose of clarifying ISP reviews timeframes and grace periods, and clarifying that CSAC-Supervisees can bill Medicaid for substance use case management services.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

No alternatives can achieve the purpose of the regulatory changes to remove the limit for individuals in IMDs to only be able to receive substance use case management at the time of discharge twice in a 12-month period, specifying that reimbursement is allowed, provided two conditions are met, for case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions, or aligning the regulations with current DMAS practices concerning ISP review timeframes and grace periods, and clarifying that CSAC-Supervisees can bill for substance use case management services.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Meredith Lee, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-371-0552, Meredith.lee@dmas.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC30-50-420		Case management shall not be billed for individuals who	Text changes are made to document existing DMAS practices regarding

		are in institutions for mental disease.	reimbursement for mental health case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions.
12VAC30-50-430		Case management shall not be billed for individuals who are in institutions for mental disease.	Text changes are made to document existing DMAS practices regarding reimbursement for mental health case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions.
12VAC30-50-491		Substance use case management services are not reimbursable for individuals while they are residing in institutions, including institutions for mental disease, except that substance use case management may be reimbursed during the month prior to discharge to allow for discharge planning. This is limited to two one-month periods during a 12-month period.	Text changes are made to document existing DMAS practices regarding reimbursement for substance use case management services for Medicaid eligible individuals who are in institutions, with the exception of individuals between the ages of 22 and 64 who are served in IMDs and individuals of any age who are inmates of public institutions.
		Substance use case management may be reimbursed during the month prior to discharge to allow for discharge planning. This is limited to two one-month periods during a 12-month period.	Text changes are made to remove the limit for individuals in IMDs to only be able to receive substance use case management at the time of discharge twice in a 12-month period.
		Permits providers certified as a Board of Counseling CSAC or CSAC-Assistant under supervision as defined in 18VAC115-30-10 et seq., to bill Medicaid for substance use case management	Text changes are made to clarify that CSAC-Supervisees can bill for substance use case management services.
12VAC30-60-143		Case management shall not be billed for individuals who are in institutions for mental disease.	Text changes are made to document reimbursement is allowed for case management services for Medicaid-eligible individuals who are in institutions pursuant to 12VAC30-50-420 and 12VAC30-50-430.

		Case managers shall review the ISP at least every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.	Text changes are made to clarify ISP review timeframes and grace periods.
12VAC30-60-185		Case manager shall review the ISP with the individual at least every 90 calendar days for the purpose of evaluating and updating the individual's progress toward meeting the individualized service plan objectives.	Text changes are made to clarify ISP review timeframes and grace periods.
		The utilization review general requirements, the need for Medicaid eligible individuals to meet the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria for a substance use disorder with the exception of tobacco-related disorders or caffeine-related disorders and non-substance-related disorders, and ISP completion and review timeframes appear in subsections B and C	Text changes are made to consolidate subsections B and C and remove duplicative language.
		Substance use case management shall not be billed for individuals in institutions for mental disease, except during the month prior to discharge to allow for discharge planning, limited to two months within a 12-month period.	Text changes are made to remove the limit for individuals in IMDs to only be able to receive substance use case management at the time of discharge twice in a 12-month period.
		Substance use case management shall not be billed for individuals in institutions for mental disease, except during the month prior to discharge to	Text changes are made to document reimbursement is allowed for case management services for Medicaid-eligible individuals who are in institutions pursuant to 12VAC30-50-491.

		allow for discharge planning, limited to two months within a 12-month period.	