Virginia Regulatory Town Hall

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Final Regulation
Agency Background Document

Agency name	Dept of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapters 50, 60, 80 and 120
Regulation title	Amount, Duration and Scope of Medical and Remedial Services, Standards Established and Methods Used To Assure High Quality of Care, Methods and Standards for Establishing Payment Rates – Other Types of Care, and Waivered Services
Action title	Substance Abuse Treatment Services
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

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action establishes limited coverage of substance abuse treatment services (SAS) for children and adults. The 2007 *Acts of Assembly*, Chapter 847, Item 302 PPP required that the Department of Medical Assistance Services (DMAS) amend the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults, effective July 1, 2007. These services include emergency services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services. Substance abuse services, with the exception of residential and day treatment services for pregnant and post partum women, were not offered prior to an emergency regulation promulgated by DMAS, which became effective July 1, 2007. The addition of these services fills a gap in the continuum of care for Medicaid enrollees.

Managed care recipients now have substance abuse services covered by Medicaid. Unlike most other managed care Medicaid services, substance abuse services DO NOT require a referral by the primary care physician. Managed care recipients who are enrolled in a Managed Care Organization (MCO) will have outpatient services (excluding Intensive Outpatient Services) and assessment and evaluation services covered by the MCOs. All other mandated substance abuse services to be covered (Emergency Services (Crisis), Intensive Outpatient Services, Day Treatment Services, Opioid Treatment Services, and Substance Abuse Case Management services) have been carved-out of the services provided by the Medicaid MCOs and will now be covered as fee-for-service by DMAS.

Please Note: This regulatory action was originally initiated in 2007, with the proposed regulation completing its comment period in August of 2008. This action was subject to protracted negotiations between DMAS and the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS). As a result of those negotiations regarding Substance Abuse Services, DMAS made several substantial changes in the text of the regulation, which are noted below. DMAS has received final approval from CMS and is therefore moving forward to finalize this regulatory action.

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 State Plan pages **Amount, Duration and Scope of Medical and Remedial Services, Standards Established and Methods Used To Assure High Quality of Care, Methods and Standards for Establishing Payment Rates – Other Types of Care, and Waivered Services: Substance Abuse Services (12 VAC 30, Chapters 50, 60, 80 and 120)** 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.

I hereby certify that these regulations are full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, 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 law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., 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, 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.

The 2007 *Acts of Assembly*, Chapter 847, Item 302 PPP requires that DMAS amend the State Plan for Medical Assistance to provide coverage of: substance abuse treatment services for children and adults including emergency services; evaluation and assessment; outpatient services; evaluation and assessment; outpatient services, also including intensive outpatient services; targeted case management; day treatment and opioid treatment services.

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 it 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.

The purpose of this regulatory action is to establish coverage of basic substance abuse treatment services in the Medicaid Program. Substance abuse treatment services, with the exception of residential and day treatment services for pregnant and post partum women, were not previously a part of the State Plan. The addition of these services fills a gap in the continuum of care for Medicaid enrollees.

These current proposed regulations follow previously promulgated emergency regulations for substance abuse treatment for emergency services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services for children and adults. The new services are modeled after existing mental health services for consistency. These new services provide needed resources for persons with substance use disorders. Additionally, studies have demonstrated that Medicaid reimbursement for substance abuse treatment produces savings benefits for both public safety and health. This regulatory action will help protect the health, safety and welfare of Medicaid recipients by providing these new services.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The Medicaid State Plan sections affected by this regulatory action are Amount, Duration, and Scope of Medical and Remedial Services (12VAC 30-50), Standards Established and Methods Used to Assure High Quality of Care (12VAC 30-60), Methods and Standards for Establishing Payment Rates – Other Types of Care (12VAC 30-80), and Waivered Services (12 VAC 30-120).

Currently the Medicaid coverage provided for substance abuse treatment services is for pregnant and postpartum women only. The provisions are for residential treatment services and substance abuse day treatment. Residential treatment services for pregnant and postpartum women provides intensive intervention services in residential facilities other than inpatient facilities for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, thus achieving and maintaining a sober and drug free lifestyle. Substance abuse day treatment for pregnant and postpartum women provides intensive intervention services at a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week.

Substance abuse involves the use of illegal drugs, such as heroin and cocaine, as well as the overuse of alcohol, by both adults and children. Substance abuse can also involve the illegal use of prescription medications, by persons for whom this medication has not been prescribed. Persons for whom such prescription medications have been appropriately prescribed can also abuse their medications by using them beyond their treatment needs and by selling their prescriptions as street drugs. The substance abuse covered by this action does not include the use of tobacco or caffeine.

Medicaid provides coverage of existing services through managed care organizations as well as through fee-for-service. Medicaid recipients who live in areas of the state covered by managed care organizations (MCO's) are required to obtain their Medicaid covered services from the MCO's network of providers except if the recipient meets an MCO exclusion reason. Those Medicaid recipients who are excluded from participation in an MCO program and those recipients who live in areas of the state not covered by MCOs obtain Medicaid covered services from providers who are enrolled with DMAS and paid under a fee-for-service method.

These proposed regulations for substance abuse treatment cover emergency (crisis) services; evaluation and assessment; outpatient services, intensive outpatient services, targeted case management; day treatment and opioid treatment services for children and adults. As noted above, studies have demonstrated that Medicaid reimbursement for substance abuse treatment produces savings benefits for both public safety and health.

These new covered services will be defined as follows:

- **Emergency (crisis) services** – Immediate substance abuse care, available 24 hours a day, seven days per week to assist recipients who are experiencing acute dysfunction requiring immediate clinical attention.
- **Evaluation and assessment** – A structured interview documented as a written report which provides recommendations substantiated by findings of the evaluation and documents the need for the specific service.
- **Outpatient services** – individual, family, and group therapy, generally less than 3 hours per week.
- **Intensive out-patient services** – nonresidential setting provided to those recipients who do not require the intensive level of care of inpatient, residential, or day treatment services, but require more intensive services than outpatient services.
- **Targeted case management** – a plan of care in effect which requires direct or recipient-related contacts or communication or activity with the recipient, family, service providers, or significant others, including at least one face-to face contact with the recipient every 90 days.
- **Day treatment services** - include the major psychiatric, psychological, and psycho-educational modalities that include individual, group counseling and family therapy, education about the effects of alcohol and other drugs on the physical, emotional, and social functioning of the individual; relapse prevention, occupational and recreational therapy, or other therapies.
- **Opioid treatment services** – covers psychological and psycho-educational services for persons who need opioid therapy.

Treating substance abuse will lead to future savings for the Commonwealth. Studies confirm that an investment in substance abuse services generates future savings in the cost of unemployment, social services, health care, public safety, and other system-wide costs.

Additionally, the provision of Medicaid reimbursed substance abuse investment promotes a more efficient use of existing Medicaid expenditures. Studies also indicate that 20 percent of all Medicaid expenditures on hospital based care are related to substance abuse services; expanded community services will reduce these costs. There are not anticipated negative issues that will need to be addressed in the permanent regulations.

Managed care recipients will have substance abuse services covered by Medicaid. These services are NOT subject to required referrals by the primary care physician. Managed care recipients who are enrolled in an MCO will have outpatient services (excluding Intensive Outpatient Services) and assessment and evaluation services covered by the MCOs existing provider networks. All other mandated substance abuse services to be covered (Emergency Services (Crisis), Intensive Outpatient Services, Day Treatment Services, Opioid Treatment Services, and Substance Abuse Case Management services) will be carved-out of the MCO and covered by DMAS with a fee-for-service payment methodology.

Medicaid recipients who are not managed care participants will access these new services through their existing access of DMAS-enrolled fee-for-service providers.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-50-140		N/A.	Provides a detailed description of outpatient substance abuse services, including service limitations, provider requirements and standards for medical necessity determinations.
12 VAC 30-50-150		N/A	Provides a detailed description of other provider types who may provide outpatient substance abuse services, including service limitations and provider requirements.
12 VAC 30-50-180		N/A	Provides a detailed description of provider types who may provide substance abuse services in a community mental health clinic setting.
	12 VAC 30-50-228	N/A	Provides a detailed description of community substance abuse treatment services, including crisis intervention, day treatment services in non-residential settings, intensive outpatient services, and opioid treatment services.
	12 VAC 30-50-491		Describes case management services for individuals who have an Axis 1 substance-related disorder.
	12 VAC 30-60-180		Describes utilization review of community substance abuse treatment services
	12 VAC 30-60-185		Describes utilization review of case management services
	12VAC30-80-32	N/A	Reimbursement for substance abuse services: describes rate methodologies for substance abuse service providers, based upon Agency fee schedule and existing fees applied to current providers.
12VAC30-120-310.		Services exempted from Managed care referral requirements.	Edits language to cover all substance abuse referrals.
12 VAC 30-120-380		MCO responsibilities	Adds language regarding the services carved out of the MCO contract with DMAS, making MCOs responsible for outpatient services (excluding intensive outpatient services), and Assessment and Evaluation for substance abuse treatment.

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 to the public is that Medicaid participants will be able to receive certain Medicaid reimbursed substance abuse treatment services. Assisting individuals with recovery from substance abuse will benefit the individual, the family, and the community.

Treating substance abuse will lead to future savings for the Commonwealth. Studies confirm that an investment in substance abuse services generates future savings in the cost of unemployment, social services, health care, public safety, and other system-wide costs. .

Additionally, the provision of Medicaid reimbursed substance abuse investment promotes a more efficient use of existing Medicaid expenditures. Studies also indicate that 20 percent of all Medicaid expenditures on hospital-based care are related to substance abuse services; expanded community services will reduce these costs.

The addition of these services will have a positive impact on health care providers as well. Both public and private providers will be eligible to enroll to render the substance abuse treatment services. Public providers and private practitioners are already accustomed to Medicaid's billing forms, service documentation requirements, and audit standards and practices.

DMAS has not identified any disadvantages to the public regarding this proposal.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

In addition to the changes detailed below, all references in these regulations to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) were changed to the updated Department of Behavioral Health and Developmental Services (DBHDS).

Section number	Requirement at proposed stage	What has changed	Rationale for change
12 VAC 30-50-140(P)	Limits on substance abuse services (SAS)	Added phrase to end of sentence regarding SAS under EPSDT to note that additional SAS is available when the specified limits have been exceeded	SAS provided pursuant to EPSDT are not subject to the limits specified in this section; this must be noted in the regulations

12 VAC 30-50-150(E)	Limits on outpatient SAS	Added phrase to end of sentence regarding outpatient SAS under EPSDT to note that additional outpatient SAS is available when the specified limits have been exceeded	Outpatient SAS provided pursuant to EPSDT are not subject to the limits specified in this section; this must be noted in the regulations
12 VAC 30-50-150(E)(1)	Providers of outpatient SAS	Added requirement that providers be qualified in clinical evaluation; treatment planning; referral; service coordination; counseling; client, family, and community education; documentation; professional and ethical responsibilities	These requirements are essential components of outpatient SAS
12 VAC 30-50-491(A)	Case Mgt. services – Target group	Added notice that nicotine or caffeine abuse or dependence shall not be covered	Same notice is set forth in subsection D - Covered services, however DMAS opted to include it up front
12 VAC 30-50-491(H-K)	N/A	Inserted federally required assurances regarding case mgt.	CMS required DMAS to insert this text
12 VAC 30-80-32	Reimbursement of SAS	Inserted new sections detailing the methodologies for the various provider types associated with SAS	CMS required DMAS to insert this text

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

DMAS' proposed regulations were published in the January 7, 2007, *Virginia Register* (VAR 24:9) for their public comment period from January 7, 2007 through March 7, 2007. No responsive comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

The changes noted below are the changes made in previous stages of this regulatory action.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-50-150 12VAC 30-50-180		Regulation section does not address this service.	Certified Substance Abuse Counselors with a Bachelors Degree are not an allowed provider of outpatient substance abuse treatment services Certified Substance Abuse Counselors with a Bachelors Degree under the direct supervision of a Medicaid enrolled qualified and licensed professional, will be allowed to provide outpatient substance abuse treatment services. This is consistent with State Code § 54.1-3507.1
12 VAC 30-50-140		Clarified that services are under the direction of a physician.	This change was required by CMS
12 VAC 30-50-180		Clarifies that a psychiatric nurse practitioner must be licensed.	This change was required by CMS
12 VAC30-50-228		Regulation section does not address this service.	Intensive Outpatient Services must be provided a minimum of 4 hours and a maximum of 19 hours. In order to allow clients to receive follow up services, the minimum requirement of 4 hours will be deleted.
12 VAC 30-50-228 A(1)(c) and (d)		Regulation section does not address this service.	States that certain functions may be provided by a QSAP, a certified pre-screener, or a paraprofessional. Changes language to shall to clarify which providers are approved to do certain functions.
12 VAC 30-50-228 A (1) &(2)		Adds to the definition of services.	This change was required by CMS.
12 VAC 30-50-491 D(2)(c)		Regulation section does not address this service.	Describes provider qualifications for case managers. Allows providers to qualify with a non-human services bachelor's degree with certification as a CSAC or a CAC.
12 VAC 30-50-491		Deleted "significant others" in A and clarified that there is no case management billing in institutions for mental disease.	These changes were required by CMS.

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.

DMAS invited input from providers and other stakeholders as the regulations were developed. This proposal includes changes recommended by stakeholders to improve the delivery of the new services. Documentation and billing procedures were modeled after current mental health services, to the extent possible, to minimize the impact on providers and promote simplification of service delivery. In addition, the federal oversight agency, the Centers for Medicare and Medicaid Services (CMS), required DMAS to make certain changes in the text of the regulations, over which DMAS had little or no flexibility. These changes are reflected in the final text of the regulation.

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.