



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 30-50 Amount, Duration, and Scope of Medical and Remedial Care and Services
Department of Medical Assistance Services
Town Hall Action/Stage: 5163 / 8744
June 24, 2021

Summary of the Proposed Amendments to Regulation

The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to promulgate a permanent regulation to replace an emergency regulation that went into effect on September 19, 2019. As with the emergency regulation, the permanent regulation would incorporate alternative benefit plan language that was included in the Virginia State Plan as a part of the Medicaid expansion implementation that became effective on January 1, 2019.

Background

The proposed regulation is part of the overall implementation process for Medicaid expansion in accordance with several legislative mandates: the 2018 Acts of Assembly, Chapter 2, Item 303.SS.4(a)(1); the 2019 Acts of Assembly, Chapter 854, Item 303.SS.4(a)(1); the 2020 Acts of Assembly, Chapter 1289, Item 313.QQ.3(a)(1); and the 2021 Special Session 1 Acts of Assembly, Chapter 552, Item 313.QQ.3(a)(1). These mandates direct DMAS to “amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any waivers thereof, to implement coverage for newly eligible individuals pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act.”

The State Plan Amendments have already been made and approved by the federal Centers for Medicare and Medicaid Services, and emergency regulations were subsequently adopted. This action permanently replaces a key element of the regulation that helped effectuate the expansion. More specifically, the regulatory provision being permanently adopted by this action involves the alternative benefit plan (ABP) that is available to individuals who are covered

by Medicaid expansion. The Centers for Medicare and Medicaid Services (CMS) requires state Medicaid agencies to create an ABP for expansion populations. The main purpose of the requirement is to assure that Virginia's expansion population has access to comprehensive health insurance.

The proposed changes describe how the plan was developed; the essential health benefits that were reviewed; the benefits-related assurances Virginia makes to CMS; how the ABP will use both managed care and fee-for-service delivery systems; how the ABP interacts with the Health Insurance Premium Payment program and cost sharing; and the general assurances that Virginia makes to CMS.

Estimated Benefits and Costs

According to DMAS, the primary effect of the proposed changes would be consistency between the Medicaid State Plan and the Virginia Administrative Code (VAC). It has long been a practice to amend the regulation to mirror the changes that were previously made to the Medicaid State Plan. In that sense, this regulatory action is a housekeeping measure. Under the General Assembly's multiple directives stated above, the expansion of Medicaid coverage to indigent adults that meets the federal ABP requirements addressed in this regulation has already been in effect for more than two years.

Although permanently amending the VAC to reflect what has already been implemented will not create any immediate economic impact, the practice still has value. The legislation has addressed important aspects of expansion in a piecemeal fashion. And though the State Plan stitched these directives together, its purpose is to provide a basis for federal authority. In contrast, the VAC is the basis for the state authority. To the extent that the proposed ABP amendments help serve as a source for information regarding the ABP, the proposal should benefit Medicaid providers, recipients, and the public in general.

Businesses and Other Entities Affected

The proposed amendments should benefit Medicaid providers, recipients, and the public in general in terms of providing a permanent source for the rules governing the ABP for the expansion population. No adverse economic impact¹ on any entity is indicated.

¹ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

Small Businesses² Affected:

The proposed amendments do not adversely affect small businesses.

Localities³ Affected⁴

The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property

No effects on the use and value of private property or real estate development costs is expected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

² Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

³ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.