



Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50-226, 12VAC30-50-420 and –430
Regulation title	Amount, Duration and Scope of Services
Action title	Community Mental Health Prior Authorization
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 regulatory action proposes new prior authorization requirements for certain community mental health services for both children and adults. It also proposes new prior authorization requirements for certain case management services for both children and adults.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

There are no acronyms or technical terms used in this Agency Background Document that are not defined in the “Definition” section of the regulations.

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, 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.

Chapter 781 of the *2009 Acts of Assembly*, Item 306 OO directed DMAS to implement prior authorization requirements for community mental health services for children and adults.

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.

The purpose of this action is to require prior authorization for certain already-covered community mental health services in order to ensure that such services are rendered based on medical necessity and Medicaid service criteria. This regulatory action will help protect the health, safety and welfare of Medicaid recipients by minimizing inappropriate utilization of unnecessary services.

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 sections of the State Plan for Medical Assistance that are affected by this action are the Amount, Duration, and Scope of Services (12 VAC 30-50-226) and Case Management Services (12VAC 30-50-420 and 50-430).

This action implements new prior authorization for Community Mental Health services for children and adults. DMAS already has regulations that address prior authorization for other services. Therefore those aspects of the Item 306 OO of the Chapter 781 of the *2009 Acts of Assembly* are already in operation and need not be addressed in this package. The particular change implemented is the addition of a prior authorization requirement to case management services for seriously mentally ill adults and emotionally disturbed children (12 VAC 30-50-420), and for youth at risk of serious emotional disturbance (12 VAC 30-50-430). In addition,

DMAS is adding this same requirement to the following services detailed in 12 VAC 30-50-226: day treatment/partial hospitalization services, psychosocial rehabilitation, intensive community treatment, and mental health support 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 citizens of implementing these provisions. The advantage to the agency will be improved control of utilization of these rapidly escalating services. A possible disadvantage to the providers (businesses) that render these services is that now they will have to obtain prior authorization from DMAS' contractor before these services can be rendered. Some providers may see this as a barrier to service delivery.

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.

There are no applicable federal requirements that are more restrictive.

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.

No localities are uniquely affected by these proposed changes as they will apply statewide.

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 Catherine Hancock, DMAS, 600 E. Broad Street, Suite 1300, Richmond, VA 23219 (804) 225-4272; fax (804) 786-1680 (Catherine.Hancock@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.

<p>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.</p>	<p>The projected cost to prior authorize the identified services is \$1,841,869 total funds (GF-\$920,035) per year. Savings are expected to be \$3,683,738 total funds (GF - \$1,841,869) per year.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>There are no costs that will apply to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>Providers of Mental Health services, including private and public providers will be affected.</p>
<p>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.</p>	<p>As of 5/6/09, the number of affected providers are: Day Treatment = 244 Intensive In-Home = 202 Mental Health Support Services = 119 Psychosocial Rehabilitation = 61 Intensive Community Treatment = 27 Case Management = 40</p>
<p>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</p>	<p>Providers will need to have staff submit requests for prior authorization, ensure that a prior authorization is obtained, and monitor when the authorization period ends.</p>

<p>purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This proposed regulation is designed to control the utilization of these affected services and ensure that the services are rendered consistent within standards of medical necessity and Medicaid service criteria.</p>

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.

These suggested prior authorization requirements are being applied to already existing services. The alternative is to not implement prior authorization. Not implementing prior authorization could result in expenditures for unnecessary services. DMAS worked with stakeholders to minimize the amount of documents required for authorization and the frequency for requesting authorization to mitigate the impact on providers.

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 reporting requirements applicable to providers for these suggested changes. The prior authorization process with DMAS’ designated contractor has been in place for other mental health services and many of the providers of the services affected by the new regulation are familiar with the process. Adding prior authorization to ensure the appropriate utilization of the identified services was determined to have the least impact on providers and clients. Providers will receive a notice of the action taken on the request within three business days. DMAS does not apply performance standards to providers. In order for providers to receive the required authorization to render these services, they must submit certain specified information that is consistent with the existing regulations governing these services.

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 July 6, 2009, Virginia Register (VR 25:22) for its public comment period from July 6, 2009, to August 5, 2009. There were no comments received during this 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, or affect disposable family income.

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
12VAC30-50-226		Existing mental health services day treatment/partial hospitalization, psychosocial rehab, intensive community treatment, mental health supports do not currently require prior authorization in order for Medicaid to pay providers’ claims	Providers will now be required to seek prior authorization before their claims for these services will be paid.

12VAC30-50-420		Case management for seriously mentally ill adults and emotionally disturbed children.	Providers will now be required to seek prior authorization before their claims for these services will be paid.
12VAC30-50-430		Case management for youth at risk of serious emotional disturbance	Providers will now be required to seek prior authorization before their claims for these services will be paid.