



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	12 VAC 30
VAC Chapter Number:	Chapter 50
Regulation Title:	Amount, Duration, and Scope of Services Case Management
Action Title:	Case Management for Treatment Foster Care
Date:	11/1/2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This will be a new covered service under Medicaid and will directly benefit the children who receive these case management services. It will also benefit the families of these children by providing additional supports to restore healthy functioning and relationships.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

Typographical errors have been corrected.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Director of the Department of Medical Assistance Services adopted these final regulations on November 1, 2000, in lieu of the Board of Medical Assistance Services.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

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 the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Director approved, on April 3, 2000, the initiation of a public comment period for the proposed regulations. The Code, in § 9-6.14:7.1 et seq., requires agencies to adopt and amend regulations subject to public notice and comment when the action being taken does not meet one of the statutory exemptions.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on January 1, 2000. The Code, at §9-6.14:4.1(C) requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on January 6, 2000.

Chapter 935 of the 1999 Virginia Acts of Assembly contained the following language to replace similar authority granted in the 1998 Appropriations Act.

"As a condition of this appropriation, the Department [of Medical Assistance Services] shall promulgate regulations to implement Medicaid reimbursement for treatment foster care designed to serve children and youth referred by local Comprehensive Services Act teams. If the Health Care Financing Administration approves treatment foster care for Medicaid reimbursement, emergency regulations as specified in §9-6.14:4.1.C.5, Code of Virginia, shall be effective January 1, 2000, or earlier. However, emergency regulations may become effective at a later date if the federal Health Care Financing Administration determines, upon submission of a proposal by the Department, that federal regulations preclude earlier implementation."

Furthermore,

"...if the United States Department of Health and Human Services or the Health Care Financing Administration determines that the process for accomplishing the intent of a part, section, subsection, paragraph, clause, or phrase of this item is out of compliance or in conflict with federal law and regulation and recommends another method of accomplishing the same intent, the Director of the Department of Medical Assistance Services, after consultation with the Attorney General, is authorized to pursue the alternative method."

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purposes of this proposal are to promulgate permanent regulations, to supercede the current emergency regulations, and to cover case management for treatment foster care services. This is a new service for Medicaid coverage and will benefit the health of the children who directly receive this service and provide additional supports to their families to restore healthy functioning and relationships.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The sections of the State Plan affected by this action are Case Management Services (Attachment 3.1-A)(12 VAC30-50-12 VAC 30-50-480), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-170), Methods and Standards for Establishing Payment Rates-Other Types of Care (12 VAC 30-80-111). The regulations affected by this regulatory action are Treatment Foster Care Services (12 VAC 30-130-900 through 130-1000).

Chapter 935 of the 1999 Virginia Acts of Assembly and Chapter 464 of the 1998 Virginia Acts of Assembly directed the Department to submit an amendment to the State Plan for Medical Assistance to provide Medicaid coverage for treatment foster care. The amendment was initially to have been effective January 1, 1999. The 1999 Appropriations Act extended the effective date to January 1, 2000. The amendment for treatment foster care was to have taken effect within 280 days of enactment of the Act, giving DMAS the authority to promulgate emergency regulations.

This new service was designed to provide federal Medicaid matching funds for a service funded at the present time only through state and local funding. Prior to this legislative mandate, the Joint Legislative Audit and Review Commission (JLARC) completed in 1997 a review of the Comprehensive Services Act (CSA). JLARC recommended that Medicaid coverage be extended to include treatment foster care. More access to this level of care can be instrumental in avoiding the use of more restrictive and expensive institutional services. The 1998 and 1999 Appropriations Act provisions were based upon these JLARC recommendations.

During 1998, DMAS staff worked with a large work group of stakeholders, including representatives from the Office of Comprehensive Services, to redesign a program intended to meet all federal requirements. The proposed State Plan amendment was informally submitted to the Health Care Financing Administration (HCFA) for review in November, 1998. In December, 1998, federal staff informed DMAS that the coverage of treatment foster care would not be approved as a State Plan amendment because the service included components not qualifying for Medicaid federal matching funds.

During 1999, DMAS continued to explore with HCFA alternative available avenues to federal funding for treatment foster care services for CSA children. Based on technical assistance by staff of HCFA, the covered service was redesigned and redefined as case management of treatment foster care. This revision permits Medicaid reimbursement for case management services that are a major portion of costs for CSA children in treatment foster care. This approach removes other components of treatment foster care that did not qualify for Medicaid federal matching funds, such as the stipend for foster parents.

Comprehensive Services Act

In 1992, the Virginia General Assembly enacted the Comprehensive Services Act for At-Risk Youth and Families (Chapter 46, Title 2.1 of the Code of Virginia). The intent of the legislation was to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families. The purpose is to preserve families and provide appropriate services in the least restrictive environment while protecting the welfare of children and maintaining public safety. Part of the initiatives to improve services to children was the development of a

continuum of care for children including in-home services, specialized foster homes, and residential treatment services. The specialized foster homes include treatment foster homes for children with behavioral or mental health problems.

DMAS expects that coverage of case management for children who are receiving treatment foster care services will provide additional support and services to families in trouble. This is expected to promote family unity and healing of dysfunctional relationships.

The differences in these suggested final regulations are mostly technical and editorial in nature. There are no substantive policy differences suggested in these final regulations as compared to those that were previously proposed for public comment. Additionally, these final regulations are substantially similar to the previous emergency regulations.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

The primary advantages of covering this new service through Medicaid will be: the standardization and provision of the service and a uniform quality of care across the Commonwealth, and the reduction of some of these costs of care from General Fund and local dollars. The disadvantage that may occur is providers' dislike of Medicaid's federal requirements and uniform reimbursement rates.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

DMAS' proposed regulations were published in the July 31, 2000, Virginia Register for their public comment period from July 31 through September 29, 2000. Copies of the proposed regulations were distributed to the Virginia Poverty Law Center, the Department of Social Services, Phillips Programs, Grafton, People Places, Youth, Family and Adult Clinical Services Division of the Hampton-Newport News Community Services Board, The Barry Robinson Center, Highlands Community Services Board, the Office of Comprehensive Services, and Lutheran Family Services. Comments were received from the Foster Family-based Treatment Association Virginia Chapter and the Department of Social Services. A summary of the comments received follows.

Foster Family-based Treatment Association Virginia Chapter

This organization submitted a position paper. This paper stated that paperwork had increased requiring the addition of both clerical and case management staff. “Communication among the various parties involved in service delivery and payment has been problematic at times. Providers frequently do not receive information needed for Medicaid pre-authorization and re-certification in a timely manner from localities”. Such problems were recognized as inherent in the learning curve necessary in any system change and confidence was expressed that such issues could be resolved with ongoing, responsive dialogues among the affected parties.

This paper expressed their primary concern as “the future structure of Medicaid funding and the impact of increased paperwork demands on the quality of services to children”. It was estimated that the current level of paperwork had increased providers’ costs roughly 8 percent. This estimate was based on a recent survey that this Association had conducted among its member agencies.

The survey was conducted six months after the introduction of Medicaid funding of case management of treatment foster care services. “Fee data were submitted by 16 of 21 member agencies, including the largest treatment foster care providers in the Commonwealth. Respondent agencies together serve a total of 700 children, half of whom have been approved for and receive Medicaid funding for treatment foster care. The median increase in fees over pre-Medicaid rates was 13 percent, of which 8 percent was due to costs associated with meeting Medicaid paperwork requirements”. The paper stated that it was clear that single rate arrangement had not produced undue or unusual fee increases by treatment foster care providers and that there were no compelling reasons to change the fee structure.

The Association urged DMAS to make permanent the current Medicaid funding structure for treatment foster care “with the addition of an annual cost of living increase to the single, adequate rate now in place”. This Association also requested that they be included in any discussions of changes to this program.

DMAS Response:

DMAS appreciates this Association’s careful analysis of these regulations, thoughtful recommendations, and the organizational effort expended for the referenced survey and its analysis. DMAS continues to collect monthly time sheets from the service providers for future rate analysis activities. Presently, DMAS does not yet even have a full 12 months of this data. After an appropriate time period has elapsed, DMAS will collect cost report data in addition to time sheets for future rate analyses.

The Department of Social Services

This agency provided specific recommendations for changes to the regulations. The proposed regulations contained a typographical error in a citation to a DSS regulation and also some text had been inadvertently omitted from the DMAS regulation at 12 VAC 30-130-930 C.

DSS recommended at 12 VAC 30-130-930 B that language be added to provide for foster children’s contacts with their natural families, unless if such contacts are specifically prohibited by court order.

DMAS Response:

The typographical error and the language omission have been corrected in these final regulations. Family contact for foster care children, except where specifically prohibited by court order, has been added as suggested.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Non-substantive typographical errors have been corrected.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, nor the assumption of family responsibilities. For children who receive treatment foster care services, the receipt of case management is expected to improve the quality of care received and reduce the amount of time that these children are simply ‘warehoused’.