Virginia Regulatory Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50 and 12 VAC 30-80
Regulation title	Amount, Duration, and Scope of Services: Case Management; Methods and Standards for Establishing Payment Rates—Other Types of Providers
Action title	Early Intervention (Part C) Case Management
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

1) Please explain why this is an emergency situation as described above.
2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an agency may adopt regulations in an "emergency situation": (A) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (B) a situation in which Virginia statutory law, the Virginia appropriation act,

or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of Subdivision A.4 of § 2.2-4006; or (C) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action. This suggested emergency regulation meets the standard at *COV* 2.2-4011(B) 280 day standard as discussed below.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Early Intervention (Part C) Case Management (12 VAC 30-50-415 and 12 VAC 30-80-110) and also authorize the initiation of the permanent regulation promulgation process provided for in § 2.2-4007.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.

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 and 325, 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 890, Item 297 of the 2011 Acts of the Assembly provided:

"UUUU. The Department of Medical Assistance Services, in consultation with the Department of Behavioral Health and Developmental Services, shall amend the State Plan for Medical Assistance Services to include early intervention case management. The Department of Medical Assistance Services shall promulgate regulations to become effective within 280 days or less from the enactment date of this act."

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The planned regulatory action creates a new model for Medicaid coverage of case management services for children younger than three years of age who receive services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the *Code of Virginia* in accordance with Part C of the Individuals

with Disabilities Education Act (20 U.S.C. § 1431 et seq.). These children have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

The planned regulatory action is one component of this Administration's initiative to revise the system of financing for Part C early intervention services in Virginia to make more efficient use of federal and state funds. Obtaining Medicaid reimbursement for required case management services ensures that the Commonwealth will draw down the maximum available federal Medicaid match for those Part C services currently paid with state-only funds. The Department of Behavioral Health and Developmental Services (DBHDS) has proposed new regulations for certification of Early Intervention Case Managers in tandem with this regulatory action. The Department consulted with DBHDS and other stakeholders in developing these regulations.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is needed to support early intervention services, as provided under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.), which are designed to address developmental problems in young children. These services are provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Research suggests that these problems are most effectively addressed by a multidisciplinary approach working in partnership with the child's family.

Case management is an integral component of the Part C early intervention program. Case management services are designed to assist individuals in gaining access to needed medical, social, educational, and other services. Case management includes comprehensive assessment and periodic reassessment to determine the need for any medical, educational, social, or other services; development and periodic revision of an individualized family service plan (IFSP) to address identified needs; referral and assistance to help the family obtain the needed services; and monitoring and follow-up to insure that the IFSP is implemented and addresses the identified needs.

DBHDS receives Virginia's federal Part C allotment and administers the statewide early intervention program through contracts with local lead agencies. The majority of local lead agencies are under the auspices of Community Services Boards (CSBs), along with several universities, public health districts, local governments, and local education agencies.

Qualified providers are needed for case management services to effectively address the special health needs of the Part C population. This new Early Intervention Case Management service is designed to ensure that providers have the specific expertise to effectively address developmental problems in young children and their families as provided for in Part C.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The sections of the State Plan for Medical Assistance that are affected by this action are Amount, Duration, and Scope of Services: Case Management Services (12 VAC 30-50-415) and Methods and Standards for Establishing Payment Rates—Other Types of Providers: Fee for Service Case Management (12 VAC 30-80-110).

Currently, there is no defined Medicaid case management service that meets the needs of infants and toddlers with developmental disabilities served by the Part C early intervention program. Community Services Boards (CSBs) bill Medicaid for case management services for some of these children under provisions designed for individuals receiving services for mental health or intellectual disabilities (12 VAC 30-50-420, 12 VAC 30-50-430, 12 VAC 30-50-440, and 12 VAC 30-50-450). Although many children receiving early intervention services may technically fall within the definition of these other target groups, these case management models were not designed to be used for early intervention participants. These models include requirements that are not applicable to the early intervention population, and service providers are limited to CSBs.

CSBs currently bill Medicaid for case management under the mental health or intellectual disabilities services models for approximately 35% of the children who are covered by Medicaid and enrolled in the Part C early intervention program, reimbursed at an average rate of $326.50 per month.

These emergency regulations define a new approach to payment for case management services under Medicaid that supports the Part C early intervention model. The new Early Intervention Case Management service will meet federal Part C requirements for care coordination as well as federal Medicaid requirements for case management reimbursement. Case managers will be certified by DBHDS to ensure that they have the expertise to effectively address the needs of children with developmental delays and their families under the federal Part C program. In addition to coordinating specialized services needed to ameliorate the child's developmental delay, this new case management model will facilitate coordination with the child's primary care provider and support quality preventive services such as well child care, immunizations, and lead testing, covered under the Early and Periodic Screening, Diagnosis and Treatment program for all children enrolled in Medicaid.

Some infants who receive services through the Part C early intervention program may also receive case management services for high risk pregnant women and children (12 VAC 30-50-140). These services are designed to improve birth outcomes and reduce infant mortality by increasing access to care and promoting continuity of care for women with a high risk pregnancy

through the prenatal period and infancy. Providers of this case management service are limited to registered nurses and trained social workers with experience working with pregnant women. Early Intervention Case Management providers will be required to coordinate services with these case managers to avoid duplication of services.

The proposed Early Intervention Case Management service will reimburse for coordination services that are federally required by the Part C early intervention program to assist children and their families. All local lead agencies under contract with DBHDS or their designees will be eligible to receive Medicaid reimbursement for case management services. All private and governmental fee-for-service providers will be paid according to the same methodology.

DMAS anticipates implementing this regulatory action without increased cost to the state or localities. A new rate is being established based on the actual requirements of the service, estimated at $120.00 per month. The projected savings associated with the elimination of payment for case management under the mental health and intellectual disabilities models for children served by the Part C early intervention program will offset the new costs incurred under the new model for the entire Part C population covered by Medicaid. The agency fee scale will define rates that are budget neutral with the amount of money that is currently being spent on early intervention participants who previously utilized Medicaid case management services designed for other target groups.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	12 VAC 30-50-415		This new section defines the Early Intervention Case Management service, eligible population, and provider qualifications.
12 VAC 30-80-110			The addition to this section defines how the Early Intervention Case Management service will be reimbursed.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives that would be responsive to this specific mandate.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated

in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also 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, record-keeping 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 for the public comment file may do so by mail, email or fax to Molly Carpenter, Policy Analyst, Division of Maternal and Child Health, DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219; 804/786-1493; fax 804/786-1680; **Molly.Carpenter@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 day of the public comment period.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

DMAS has been having monthly meetings with affected members of the public and will continue to do so.

Participatory approach

Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency/board has already been using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory panel are encouraged to contact the individual named above. The primary function of the advisory panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Notification of the composition of the advisory panel will be sent to all applicants.

DMAS has used the participatory approach to develop this emergency regulation and will continue to do so. Persons interested in assisting in the development of a proposal should notify

the Department contact person by the end of the comment period and provide his name, address, phone number, email address and the organization represented (if any).

Family impact

Assess the potential 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.