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Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC <u>30- 50</u>
Regulation title(s)	Amount, Duration, and Scope of Services: Physician Services, Other Practitioner Services,
Action title	Outpatient Mental Health Service Limit Review
Final agency action date	May 8, 2017
Date this document prepared	May 8, 2017

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action conforms DMAS' regulations (12 VAC 30-50-140 and 12 VAC 30-50-150) to the mental health parity requirements of federal statute (the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008) and federal regulations (42 CFR Part 438, Subpart K (438.900 et seq.) and 42 CFR Part 440, Subpart C (440.395)). Both the federal statutory changes and regulatory changes addressed the application of MHPAEA parity requirements to Medicaid managed care organizations (as described in section 1903(m) of the *Act*), Medicaid benchmark plans and the Children's Health Insurance Program under Title XXI of the *Act*. Medicaid is required to cover mental health and substance use disorder benefits to the

same degree and in the same manner as medical/surgical benefits; that is, the financial requirements and treatment limitations must be the same. Medicaid is not permitted to impose financial limitations (such as a lifetime dollar benefit limit) nor service limits (such as a specified number of covered visits) for mental health and substance abuse treatment services that it does not also impose on medical/surgical services. This action removes the 26-visit limit from outpatient psychiatric services from the regulations.

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 Summary with the attached amended regulations entitled Mental Health Parity (12 VAC 30-50-140; 12 VAC 30-50-150) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A)(4)(c), of the Administrative Process Act.

May 8, 2017

/Cynthia B. Jones/

Date

Cynthia B. Jones, 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 citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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.

Section 1937 of the Act was amended, by the Affordable Care Act (section 2001 c), directed that plans described in section 1937 of the Act that include medical/surgical benefits and mental

health and substance use disorder benefits ensure that the financial requirements and treatment limitations applicable to such mental health and substance use disorder benefits comply with the mental health parity provisions of the Public Health Services Act (section 2726).

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

This action modifies several State Plan sections (and related regulations) in conformance to changes in federal law as discussed above: Amount, Duration, and Scope of Services: Physician Services (12 VAC 30-50-140) and Other Practitioner Services (12 VAC 30-50-150).

CURRENT POLICY

It has been longstanding policy of the Department of Medical Assistance Services to limit its coverage of outpatient psychiatric visits to 26 visits in a year without prior authorization being required. Subsequent outpatient psychiatric services required prior authorization and were also limited to 26 visits per annum. This service limit was adopted in 1981 (State Plan Amendment 81-05).

ISSUES

The changes to federal law and regulation discussed above have invalidated this service limit so it must be removed from the State Plan and regulations.

RECOMMENDATIONS

DMAS recommends that the 26 visit limit for outpatient psychiatric services be stricken from the relevant regulations.

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; nor 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.