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

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-120- 500 through 600
<b>Regulation title(s)</b>	Definitions; CCC Plus Mandatory Managed Care Enrollees, Enrollment Process; Covered Services, Flexible Benefits; Payment Rate for CCC Plus Contractors, Emergency Care by Out-of-Network Providers; Sanctions; State Fair Hearing Process; Appeal Timeframes; Prehearing Decisions; Hearing Process and Final Decision; Division Appeal Records; Provider Appeals
<b>Action title</b>	CCC Plus
<b>Date this document prepared</b>	March 8, 2017

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), 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 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Commonwealth Coordinated Care Plus (CCC Plus) is a new statewide Medicaid managed long term services and supports program that will serve approximately 214,000 individuals with complex care needs through an integrated delivery model across the full continuum of care. Care

management is at the heart of the CCC Plus high-touch, person-centered program design. CCC Plus focuses on improving quality, access and efficiency. CCC Plus is proposed to launch August 2017 and enrollment into CCC Plus is required for qualifying populations.

## 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.*

CCC Plus = Commonwealth Coordinated Care Plus  
 DMAS = Department of Medical Assistance Services  
 LTSS – Long-Term Services and Supports  
 MLTSS = Managed Long-Term Services and Supports

## Emergency Authority

*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. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.*

Section 2.2-4011 of the *Code of Virginia* 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 § 2.2-4006(A)(4). The 2016 *Acts of the Assembly*, Chapter 780, Item 306.JJJ (3) directed the agency to "include all remaining Medicaid populations and services, including long-term care and home- and community-based waiver services into cost-effective, managed and coordinated delivery systems... DMAS shall promulgate regulations to implement these provisions within 280 days of its enactment."

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled CCC Plus (12 VAC 30-120-500 through 12 VAC 30-120-600) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

## Legal basis

*Other than the emergency authority described above, 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) the promulgating entity, i.e., agency, board, or person.*

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.

In addition, Section 2.2-4011 of the Code of Virginia 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.

The 2016 *Acts of the Assembly*, Chapter 780, Item 306.JJJ (3) directed the agency to "include all remaining Medicaid populations and services, including long-term care and home- and community-based waiver services into cost-effective, managed and coordinated delivery system."

**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 General Assembly directed DMAS to transition individuals from the Fee-For-Service delivery model into the managed care model to achieve high quality care and budget predictability. Managed care offers better care coordination and integration of care, which can address rising health care costs and the growing population eligible for Medicaid.

**Need**

*Please describe 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.*

This regulatory action is essential to protect the health, safety, and welfare of citizens who are receiving Medicaid long-term services and supports (LTSS), by enabling them to receive high quality care and care coordination services.

**Substance**

*Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.*

Under the current policy, individuals receiving LTSS are served primarily under the fee-for-service system. The fee-for-service system lacks comprehensive care coordination, the flexibility to provide innovative benefit plans and value based payment strategies, and budget predictability. Current spending trends for LTSS are unsustainable.

Consistent with Virginia General Assembly and Medicaid reform initiatives, DMAS is moving forward with transitioning individuals from fee-for-service delivery models into managed care.

The CCC Plus program will include many of the core program values from the Commonwealth Coordinated Care Program (CCC). CCC launched in March 2014 and is a CMS Medicare-Medicaid Financial Alignment Demonstration. CCC operates as a voluntary managed care program with three health plans and includes a strong, person-centered care coordination component, integration with an array of provider types for continuity of care, ongoing stakeholder participation, outreach and education, and the ability for innovation to meet the needs of the population. The CCC demonstration will operate through December 31, 2017. CCC populations will transition to CCC Plus effective January 1, 2018.

DMAS has worked collaboratively with stakeholders over the past two years on every aspect of the CCC Plus program development including, the program design, model of care, CMS waiver, the request for proposal (RFP) content, and the CCC Plus managed care contract development.

CCC Plus will launch in phases across 6 regions of the Commonwealth as shown in the table below. The final implementation phase will occur in January 2018 and will include individuals transitioning from CCC as well as *aged, blind, and disabled* (ABD) populations from Medallion 3.0. The third column of the table below reflects the population totals by month of implementation. The far right column of the table reflects the populations enrolled in CCC Plus by region as of January 2018, including populations transitioning from CCC and Medallion 3.0.

<b>CCC Plus Enrollment By Region and Launch Date</b>			
<b>Date</b>	<b>Regions</b>	<b>Regional Launch Populations</b>	<b>Total Populations by Region as of Jan 2018 (Includes CCC and ABD)</b>
<b>August 1, 2017</b>	<b>Tidewater</b>	<b>19,904</b>	<b>45,774</b>
<b>September 1, 2017</b>	<b>Central</b>	<b>22,833</b>	<b>52,586</b>
<b>October 1, 2017</b>	<b>Charlottesville/Western</b>	<b>16,933</b>	<b>29,759</b>
<b>November 1, 2017</b>	<b>Roanoke/Alleghany</b>	<b>10,721</b>	<b>25,826</b>
<b>November 1, 2017</b>	<b>Southwest</b>	<b>12,661</b>	<b>21,656</b>

<b>December 1, 2017</b>	<b>Northern/Winchester</b>	<b>25,995</b>	<b>38,773</b>
<b>January 2018</b>	<b>CCC Demonstration</b>	<b>29,139</b>	
<b>January 2018</b>	<b>ABD from Medallion 3.0)</b>	<b>76,188</b>	
<b>Total</b>	<b>All Regions</b>	<b>214,374</b>	<b>214,374</b>

*\* Represents the total anticipated population by region including CCC Demo and ABD Transition from Medallion 3.0  
 Source – VAMMIS Data; totals are based on CCC Plus target population data as of July 31, 2016*

Virginia’s managed long term services and supports (MLTSS) efforts are consistent with National trends. Many states are moving LTSS into managed care programs and towards payment/outcome driven delivery models because (i) LTSS spending trends are unsustainable; (ii) managed care offers flexibility not otherwise available through fee-for-service; and (iii) there is an emphasis on care coordination/integration of care.

The CCC Plus regulations include the following sections:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
12 VAC 30-120-500	Definitions		Sets forth definitions for terms used in the CCC Plus regulations.
12 VAC 30-120-510	CCC Plus mandatory managed care enrollees; enrollment process	42 CFR §§ 438.54 – 438.56	Establishes who will be enrolled in CCC Plus and the enrollment process.
12 VAC 30-120-520	MCO contractor responsibilities; sanctions	42 CFR § 438 et seq. 42 CFR 438 Subpart I	Establishes what services will be covered.
12 VAC 30-120-530	Covered services	42 CFR § 438.210	Establishes payment rates for CCC Plus contractors and for out of network providers who offer emergency care.
12 VAC 30-120-540	Payment rate for CCC plus contractors	42 CFR §§ 438.4 – 438.8 42 CFR § 438.48	Establishes sanctions for CCC Plus contractors.
12 VAC 30-120-550	State fair hearing process	12 VAC 30-110-10 et seq. 42 CFR § 438.408	Establishes the hearing process for the CCC Plus program.
12 VAC 30-120-560	Appeal timeframes	42 CFR § 438.408	Establishes appeal timeframes.
12 VAC 30-120-570	Prehearing decisions		Establishes what decisions shall be made before a hearing.
12 VAC	Hearing process and final	42 CFR §§ 438.408 - 410	Establishes the hearing

30-120-580	decision		process.
12 VAC 30-120-590	Division appeal records	42 CFR § 438.416	Establishes the rules regarding records kept by the Appeals Division.
12 VAC 30-120-600	Provider appeals	12 VAC 30-20-500 et seq.	Establishes the rules for provider appeals.

### 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.*

No other alternatives would satisfy the General Assembly mandate.

### Public participation

*Please indicate whether 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. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Tammy Driscoll, DMAS, 600 E. Broad Street, Richmond, VA 23219, [Tammy.Driscoll@dmas.virginia.gov](mailto:Tammy.Driscoll@dmas.virginia.gov), 804-225-2552. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

## 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.*

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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.