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Fast-Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-120-360 through 30-120-430
Regulation title(s)	Definitions; Mandatory Managed Care Members; MCO Responsibilities; Payment Rate for MCOs; Payment Rate for Preauthorized or Emergency Care Provided by Out-of-Network Providers; Quality Control and Utilization Review; Sanctions; Member Grievances and Appeals
Action title	Medallion Updates
Date this document prepared	January 4, 2018

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 regulatory action incorporates updates to the Medallion regulations to incorporate changes in the Code of Federal Regulations related to the Medicaid Managed Care Final Rule, as well as changes in the Medallion contract and the appeals process.

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 Regulatory Review Summary entitled “Medallion Updates” with the attached amended regulations (12 VAC 30-120-360 through 430) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

January 4, 2018
Date

/signature/
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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. **Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens.** Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to bring Virginia regulations into alignment with current federal rules, Medallion contracts, and current practice. The regulations are essential to protect the health, safety, and welfare of citizens in that the regulatory changes ensure compliance with federal requirements, which ensures continued federal financial participation, and enables continued funding for Medicaid managed care programs.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This regulatory action is being promulgated as a fast track action because it is expected to be non-controversial. The changes in the regulatory text do not reflect changes in Medicaid programs, but instead update the text to reflect changes that have already been made in Medallion contracts and practice.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This regulatory action includes changes in the Code of Federal Regulations related to the Medicaid Managed Care Final Rule, as well as changes in the Medallion contract and the appeals process.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages to the Commonwealth and the public from these regulatory changes are that they update existing regulations to reflect current practice and to allow for continued federal financial participation.

There are no disadvantages to the Commonwealth or the public as a result of this regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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 requirements more restrictive than federal contained in these recommendations.

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.

There will be no localities that are more affected than others as these requirements will apply statewide.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

No alternative regulatory methods will allow DMAS to update the regulations currently in place. This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

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.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	None.
Projected cost of the new regulations or changes to existing regulations on localities.	None.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	None – this merely includes current practice in regulatory text.
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None.

<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>None.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact of this regulatory action is that it will ensure that regulatory text matches current practice and federal regulations.</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.

No alternative methods will allow DMAS to update the regulations currently in place.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended 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.

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, and do not increase or decrease disposable family income.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency regulation** and this 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, intent, rationale, and likely impact of proposed requirements
12 VAC 30-120-360			Definitions were updated. The definition of the following term was removed: action. New definitions were inserted for the following terms: adverse benefit determination, day, internal appeal, network providers, reconsideration. Old definitions were rewritten for the following terms: appeal, early intervention services, emergency services, grievance, managed care organization, member.
12 VAC 30-120-370		Outdated references to items such as waivers and SCHIP were included in the text.	Subdivision A1 contains text that had been in subsection A. References to waivers are removed in A2, B4, and C, and J6. Residential treatment will be covered in managed care as of April 1, 2019; a date is added to B5 to reflect that. An outdated reference to other coverage (including HIPP) is removed from B9. An outdated reference to Part C individuals is removed from B12. An outdated reference to SCHIP is removed from B14. Updated information on disenrollment is added to J and K.
12 VAC 30-120-380		Substance use case management services and opioid treatment services were carved out.	A2: community mental health services, substance use case management services and opioid treatment services, early intervention services, and long term care services may be provided through MCOs. D1 and 2: changes were made to comply with the managed care final rule. E and G: references to CFR sections are included.

12 VAC 30-120-390			CFR references are updated.
12 VAC 30-120-395		References to emergency and preauthorized services were included.	References to post-stabilization and new federal rules were added.
12 VAC 30-120-400			References to new federal rules were added.
12 VAC 30-120-410			<p>All of the changes in this section were made to comply with the Managed Care Final Rule, especially 42 CFR 438, Subpart I.</p> <p>Paragraph A6 was removed because the Final Rule did not include intermediate sanctions. Paragraph A7 was added because the Final Rule requires that Temporary Management be included as a possible sanction.</p> <p>Paragraph E was removed because it deals with appeals rather than sanctions.</p> <p>Paragraph F, F1, and F2 were removed because it is out of date and was superseded by the Final Rule.</p>
12 VAC 30-120-420			<p>All of the changes in this section were made to comply with the Managed Care Final Rule.</p> <p>In paragraph C1, the timeframe was removed because the Final Rule did not include a timeframe. Other changes were made in C1 and C2 because the Final Rule requires members to exhaust their appeal with the MCO before appealing to the agency.</p> <p>In paragraphs C3, C4, and C5, the Final Rule established requirements that the MCOs must follow with regard to grievances and appeals.</p> <p>In paragraphs F1, F2, F3, and F4, DMAS sets forth the requirements from the Final Rule with regard to MCO communications to members.</p> <p>In paragraph H4, DMAS incorporates the Final Rule requirements related to appeals not resolved wholly in favor of the member.</p>

			In paragraph J, DMAS incorporates the Final Rule requirements related to MCOs that do not follow notice or timing rules.
12 VAC30-120-430		This section was reserved.	New text was added dealing with provider grievances, reconsiderations, and appeals. This text is based on language in the contract between DMAS and the MCO, and addresses issues that arise between the MCOs and their network providers.