



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 30-50 Amount, Duration, and Scope of Medical and Remedial Care Services
12 VAC 30-60 Standards Established and Methods Used to Assure High Quality Care
12 VAC 30-130 Amount, Duration, and Scope of Selected Services
Department of Medical Assistance Services
Town Hall Action/Stage: 5231 / 8547
January 21, 2020

Summary of the Proposed Amendments to Regulation

The Director (Director) of the Department of Medical Assistance Services (DMAS) is proposing a fast-track action to update portions of the regulations relating to behavioral health services. Proposed changes include removing annual limits on the provision of peer support services to comply with federal rules, clarifying staff requirements, and replacing references to the Behavioral Health Services Administrator (or BHSA) with references to “DMAS or its contractor.”

Background

These regulations primarily apply to peer support services, which is an evidence-based mental health model of care intended to help an individual remain engaged in the recovery process by extending the reach of treatment beyond the clinical setting into an individual’s community and natural environment. These services are provided by a qualified peer recovery specialist who provides collaborative support and assistance to individuals recovering from a primary diagnosis of mental illness, substance use disorders, or both. Peer recovery specialists are either (a) self-identified consumers who are in a successful and ongoing recovery from mental illness and/or substance use disorders, or (b) family members of individuals who are receiving or have received mental health or substance abuse services.

Estimated Benefits and Costs

The Director proposes to update this regulation to reflect the removal of the annual limits on peer support services¹ for the same or similar diagnosis or treatment plan for psychiatric inpatient hospitalization. On March 30, 2016, the Centers for Medicare and Medicaid issued the Mental Health Parity Rule,² which removed service limits for peer support services. The parity rule was designed to ensure that mental health and substance use disorder services are no more difficult to access than medical and surgical services. The proposed changes are intended to allow peer support services to be authorized based on medical necessity and not be limited. DMAS has not applied the annual limits in delivery of peer support services since 2016. Accordingly, this action updates the regulation to reflect the practice that have been followed since 2016.

Removal of the annual limits in 2016 allowed providers to provide, and recipients to receive, peer support services without limits. Based on approximately six months of data since August 1, 2019, claims for eight out of 1,101 individuals exceeded the limits that were previously in place. Claims for one individual exceeded the limit of 60 days of crisis stabilization by 55 days; after the limit was exceeded, 359 units were billed for a total of \$31,951. Claims for the other seven individuals exceeded the yearly limit of 130 units of intensive community treatment; the total exceeded units for these seven individuals was 122 for a total cost of \$18,666. Thus, the main impact of this change has been provision of peer support services as medically needed at an added cost of \$50,617 to the Commonwealth and the federal government in the last six months. However, given that a single individual was solely responsible for a large portion of the additional cost, this estimate should not be taken as a robust estimate of the likely ongoing impact.

The Director also proposes make changes to correct the inadvertent omission of certain licensed mental health professionals (LMHP-Resident, Resident in Psychology, and Supervisee in Social Work) in the regulatory language. According to DMAS, despite the inadvertent omission of the titles of these professionals in the regulation, they have been allowed to provide

¹ The annual limits being removed are psychosocial rehab services (936 units), partial hospitalization (780 units), mental health skill building (520 units), crisis intervention (720 units), intensive community treatment (130 units), and crisis stabilization (60 days).

² <https://www.govinfo.gov/content/pkg/FR-2016-03-30/pdf/2016-06876.pdf>

their services. This change will simply update the regulatory language to conform to practice without any significant economic impact.

Finally, the Director proposes to strike references to the Behavioral Health Services Administrator (or BHSA) and replace it with references to “DMAS or its contractor.” The BHSA contract was extended for one year, and will end in 2020. In that contract, DMAS plans to discontinue the use of the term “BHSA” which would make that reference obsolete. This change is also not expected create a significant economic impact other than amending the language to conform to the anticipated changes in the contract.

Businesses and Other Entities Affected

The proposed amendments affect the 59 peer support services providers, 3,938 community mental health services providers, and peer support service recipients in the Commonwealth.³ Medicaid recipients who would otherwise be prevented from receiving medically needed peer support services particularly benefit from the proposed changes.

Small Businesses⁴ Affected:

Most if not all of the affected providers are small businesses. The proposed amendments do not appear to adversely affect small businesses.

Localities⁵ Affected⁶

The proposed amendments do not disproportionately affect any particular localities. The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required and no locality would be particularly affected.

Projected Impact on Employment

The proposed amendments do not appear to significantly affect total employment.

Effects on the Use and Value of Private Property

The proposed changes do not appear to affect the use and value of private property and real estate development costs.

³ Data source: DMAS

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁵ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁶ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.