



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
Department of Medical Assistance Services
Town Hall Action/Stage: 5908 / 9533
April 4, 2022**

The Department of Planning and Budget (DPB) 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). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to align the regulatory text with the federal rules and to make several clarifying changes to reflect current reimbursement practices.

Background

On March 30, 2016, the Centers for Medicare & Medicaid Services (CMS) issued the Medicaid Mental Health Parity Rule.² The overall objective of the parity rule is to ensure that accessing mental health and substance use disorder services is no more difficult than accessing medical/surgical services. However, the parity rule in 42 CFR 438.910(b)(1) created a contradiction with the current language in the Board's regulations. Under the current language, substance use case management services are not reimbursable for individuals while they are

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

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

residing in institutions, including institutions for mental disease (IMD).³ Although DMAS reports that this limitation has never been enforced, it must be stricken from the regulation for consistency with the federal rule.

Additionally, the proposed action clarifies that reimbursement is allowed as per 42 CFR 441.18(a)(8)(vii) for substance use and mental health case management services for Medicaid eligible individuals who are in institutions, provided two conditions are met.⁴ The two conditions are: (1) the case management services may not duplicate other services provided by the institution and (2) the case management services are provided to the individual 30 calendar days prior to discharge. For individuals aged 22 - 64, case management services that are rendered during the same month as the admission to an IMD are reimbursable as long as the case management services are rendered prior to the date of the admission or past the date of discharge from the IMD. According to DMAS, these changes clarify existing reimbursement practices.

The remaining changes are also clarifications regarding the Individual Service Plan review timeframes and grace periods and billing by Certified Substance Abuse Counselor-Supervisees. These changes do not affect the services provided or eligibility.

Estimated Benefits and Costs

All of the proposed changes are consistent with reimbursement rules that have been followed in practice even before the federal parity rule became effective in 2016. Thus, no significant economic impact is expected other than improving the consistency of the regulatory text with federal rules and the text's accuracy and clarity.

Businesses and Other Entities Affected

The proposed action improves consistency, accuracy, and clarity of the regulatory text for the public and Medicaid recipients and providers.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or

³ The exception to this limitation on reimbursement is that substance use case management may be reimbursed during the month prior to discharge to allow for discharge planning. This exception is limited to two one-month periods during a 12-month period.

⁴ These conditions do not apply to individuals between the ages of 22 and 64 who are served in IMD, and individuals of any age who are inmates of public institutions.

⁵ 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

reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed action is expected to have no significant economic impact other than improving the consistency of the regulatory text with federal rules and the text's accuracy and clarity. Thus, no adverse impact is indicated.

Small Businesses⁶ Affected:⁷

The proposed action does not adversely affect small businesses.

Localities⁸ Affected⁹

No adverse impact on localities is indicated.

Projected Impact on Employment

The proposed action does not affect employment.

Effects on the Use and Value of Private Property

No impact on the use and value of private property or the real estate development costs is expected.

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. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁶ 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."

⁷ 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.

⁸ "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.

⁹ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.