Virginia Regulatory Town Hall

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Proposed Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-50, 30-60, and 30-130
Regulation title	Amount, Duration and Scope of Medical and Remedial Services, Standards Established and Methods Used to Assure High Quality of Care, and Amount, Duration and Scope of Selected Services.
Action title	Add Community-Based Residential Services as covered Medicaid services
Document preparation date	September 15, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Virginia Appropriations Act of 2003, Item 325 QQQ, requires DMAS to promulgate regulations to implement coverage of new community-based, residential mental health services. A primary purpose of this action is to differentiate service intensity into two separate levels of service (A and B), and designates the highest intensity level of residential treatment programs as Level C. This regulation also describes provider requirements for the various levels of service and adds the requirement that a physician sign and date the plan of care.

Legal basis

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) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) § 2.2-4007, for this agency's promulgation of proposed regulations subject to the Governor's review, and this regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA. The Office of the Attorney General has certified that DMAS has the statutory authority to promulgate this proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action provides for Medicaid coverage of new community-based residential services for children and adolescents. Until the promulgation of an emergency regulation covering these same services, these services were paid for with state and local funds through the Comprehensive Services Act (CSA). Providing Medicaid coverage will allow the state to obtain federal financial participation for these same services and thereby significantly reduce the Commonwealth's expenditures in the state CSA budget.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The current regulations that are the subject of this action are: Amount, Duration and Scope of Services (12 VAC 30-50-130), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-61), and Amount, Duration and Scope of Selected Services (12 VAC 30-130- 860, - 870, - 880, and 12 VAC 30-130-890). Each of these sections is being amended to implement the new covered services. Certain minor changes are made to existing regulations to distinguish between the requirements for current services and the new services. Because the reimbursement methodology for the new services is the same as that for the current services, no regulatory changes are required to initiate payment.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change. The benefit to the Commonwealth and the public is that by adding these services to the Medicaid State Plan, federal financial participation can be obtained for services that are already being paid for with all state funding through the Comprehensive Services Act.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	This regulation replaces state dollars with federal dollars and is therefore projected to save the Commonwealth approximately 2.5 million dollars in FY 2005.
Projected cost of the regulation on localities	This regulation is projected to save money for localities
Description of the individuals, businesses or other entities likely to be affected by the regulation	Providers of community residential mental health services with 16 beds or less.
Agency's best estimate of the number of such entities that will be affected	Approximately 50 such providers are expected to be affected by this regulation.
Projected cost of the regulation for affected individuals, businesses, or other entities	This regulation is not projected to increase costs to the affected providers.

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.

The alternative to the current change was to leave community-based residential services at one broad, less defined level of service. This regulation change separates community-based residential care services into three levels based upon the intensity of the service. This new approach was chosen based on input from mental health providers. DMAS also consulted with the state authorities that license both lower level services in group homes [Department of Social Services (DSS)] and those that license the more intensive programs that provide actual treatment [Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)]. DMAS chose to divide the new community-based residential services into two levels because the experience of providers and licensing authorities showed that a single level of service complicated decisions about which licensing agency had authority over a given program; this difficulty ultimately complicated reimbursement issues and access to services. Separating the new services into two defined levels facilitates DSS and DMHMRSAS in placing children

into the most appropriate setting, and provides for more efficient and accurate provider reimbursement.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation is expected to have a positive impact on the institution of the family and the stability of the family since it will provide greater financial resources for the Commonwealth to address those with mental health needs and enhance access to mental health services. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; it will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, or one's children and/or elderly parents; nor will it strengthen or erode the marital commitment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current description	Proposed change and rationale
12 VAC 30-50-130	Gives scope of skilled nursing services, EPSDT and family planning.	Adds to existing regulations the description of the new community-based residential services, providing for separate levels of service (A and B).
12 VAC 30- 60-61	Describes EPSDT and community mental health services for children.	Adds to existing regulations the utilization review requirements for the new community-based residential services, distinguishing

		between separate levels of service (A and B).
12 VAC 30-130-860	Describes residential treatment programs.	Designates highest intensity of Residential Treatment programs as Level C services. Adds language to further clarify service eligibility and service requirements. Adds language to clarify that a physician must date the plan of care.
12 VAC 30-130-870	Preauthorization for residential treatment.	Designates highest intensity of Residential Treatment as Level C services. Sets forth authorization, continued stay and discharge criteria for Levels A, B and C services, including written documentation requirements. Deletes outdated reimbursement language to avoid confusion regarding reimbursement of Level C services. Adds new language regarding requirements for reimbursement for all levels of services. *The only change from the emergency regulation was made in 12 VAC 30-130-870(G). This section permitted a DMAS contractor to provide authorization for services, however DMAS will be carrying out this function in-house. The language of –870(G) was changed to delete the reference to a DMAS contractor and to clarify that authorization for services is based upon the medical necessity criteria found in 12 VAC 30-50-130.*
12 VAC 30-130-880	Provider qualifications.	Lists licensure requirements for providers of Residential Treatment Services (Level C), Community-Based Services (Level A) and Therapeutic Behavioral Services (Level B).
12 VAC 30-130-890 12 VAC 30-130-890	Qualifications for plans of care and the review of plans of care. Qualifications for plans of care and the review of plans of care.	Adds requirement that a physician must sign and date the plan of care; requires the plan of care to include target dates for attainment of goals and objectives for Level C services. Adds initial plan of care requirements for Level A and Level B services. Adds criteria for the Comprehensive Individual Plan of Care (CIPOC) for Levels A and B services.