



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services (12 VAC 30)
VAC Chapter Number:	50, 60, 80, 130
Regulation Title:	Amount, Duration, and Scope of Services Case Management
Action Title:	Case Management for Treatment Foster Care
Date:	April 4, 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This will be a new covered service under Medicaid and will directly benefit the children who receive these case management services. It will also benefit the families of these children by providing additional supports to restore healthy functioning and relationships.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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 of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on January 1, 2000. The Code, at §9-6.14:4.1(C) requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on January 6, 2000.

Chapter 935 of the 1999 Virginia Acts of Assembly contained the following language to replace similar authority granted in the 1998 Appropriations Act.

"As a condition of this appropriation, the Department [of Medical Assistance Services] shall promulgate regulations to implement Medicaid reimbursement for treatment foster care designed to serve children and youth referred by local Comprehensive Services Act teams. If the Health Care Financing Administration approves treatment foster care for Medicaid reimbursement, emergency regulations as specified in §9-6.14:4.1.C.5, Code of Virginia, shall be effective January 1, 2000, or earlier. However, emergency regulations may become effective at a later date if the federal Health Care Financing Administration determines, upon submission of a proposal by the Department, that federal regulations preclude earlier implementation."

Furthermore,

"...if the United States Department of Health and Human Services or the Health Care Financing Administration determines that the process for accomplishing the intent of a part, section, subsection, paragraph, clause, or phrase of this item is out of compliance or in conflict with federal law and regulation and recommends another method of accomplishing the same intent,

the Director of the Department of Medical Assistance Services, after consultation with the Attorney General, is authorized to pursue the alternative method."

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purposes of this proposal are to promulgate permanent regulations, to supercede the current emergency regulations, and to cover case management for treatment foster care services. This is a new service for Medicaid coverage and will benefit the health of the children who directly receive this service and provide additional supports to their families to restore healthy functioning and relationships.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The sections of the State Plan affected by this action are Case Management Services (12 VAC 30-50-480), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-170), Methods and Standards for Establishing Payment Rates-Other Types of Care (12 VAC 30-80-111). The regulations affected by this regulatory action are Treatment Foster Care Services (12 VAC 30-130-900 through 130-1000).

Chapter 935 of the 1999 Virginia Acts of Assembly and Chapter 464 of the 1998 Virginia Acts of Assembly directed the Department to submit an amendment to the State Plan for Medical Assistance to provide Medicaid coverage for treatment foster care. The amendment was initially to have been effective January 1, 1999. The 1999 Appropriations Act extended the effective date to January 1, 2000. The amendment for treatment foster care was to have taken effect within 280 days of enactment of the Act, giving DMAS the authority to promulgate emergency regulations.

This new service was designed to provide federal Medicaid matching funds for a service funded at the present time only through state and local funding. Prior to this legislative mandate, the Joint Legislative Audit and Review Commission (JLARC) completed in 1997 a review of the Comprehensive Services Act (CSA). JLARC recommended that Medicaid coverage be extended to include treatment foster care. More access to this level of care can be instrumental in avoiding the use of more restrictive and expensive institutional services. The 1998 and 1999 Appropriations Act provisions were based upon these JLARC recommendations.

During 1998, DMAS staff worked with a large work group of stakeholders, including representatives from the Office of Comprehensive Services, to redesign a program intended to meet all federal requirements. The proposed State Plan amendment was informally submitted to the Health Care Financing Administration (HCFA) for review in November, 1998. In December, 1998, federal staff informed DMAS that the coverage of treatment foster care would not be approved as a State Plan amendment because the service included components not qualifying for Medicaid federal matching funds.

During 1999, DMAS continued to explore with HCFA alternative available avenues to federal funding for treatment foster care services for CSA children. Based on technical assistance by staff of HCFA, the covered service was redesigned and redefined as case management of treatment foster care. This revision permits Medicaid reimbursement for case management services that are a major portion of costs for CSA children in treatment foster care. This approach removes other components of treatment foster care that did not qualify for Medicaid federal matching funds, such as the stipend for foster parents.

Comprehensive Services Act

In 1992, the Virginia General Assembly enacted the Comprehensive Services Act for At-Risk Youth and Families (Chapter 46, Title 2.1 of the Code of Virginia). The intent of the legislation was to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families. The purpose is to preserve families and provide appropriate services in the least restrictive environment while protecting the welfare of children and maintaining public safety. Part of the initiatives to improve services to children was the development of a continuum of care for children including in-home services, specialized foster homes, and residential treatment services. The specialized foster homes include treatment foster homes for children with behavioral or mental health problems.

DMAS expects that coverage of case management for children who are receiving treatment foster care services will provide additional support and services to families in trouble. This is expected to promote family unity and healing of dysfunctional relationships.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The primary advantages of covering this new service through Medicaid will be: the standardization and provision of the service and a uniform quality of care across the Commonwealth, and the reduction of some of these costs of care from General Fund and local

dollars. The disadvantage that may occur is providers' dislike of Medicaid's federal requirements and uniform reimbursement rates.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Treatment foster care will be offered by child placing agencies that operate such programs and that are licensed or certified by the Department of Social Services to comply with the Medicaid provider qualifications. JLARC estimated that there are 1,305 children who can benefit from treatment foster care services at an average cost of \$15,978 per year per child. Only a portion of the services included in the JLARC estimate has been approved by the federal government for Medicaid coverage. It is estimated that the average cost for the covered services is \$12,143 per child. Based on these costs, it is estimated that moving these services to Medicaid will result in \$7.6 million in state savings. The local share of the savings is 37.3% and the state share is 62.7%. Federal matching funds will be available for 51.67% of the program expenditures during federal Fiscal Year 2000. The funds approved in the 1998 Appropriations Act have taken these savings into account. The appropriations were placed in CSA's budget and will be transferred to DMAS as needed to make expenditures to the providers. There are no localities that are uniquely affected by these regulations as they apply statewide.

The Department of Medical Assistance Services is established under the authority of Title XIX of the federal Social Security Act, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.67%, which became effective October 1, 1999. This rate will increase to 51.85% on October 1, 2000.

This program is not expected to have a direct impact on local departments of social services, as it does not affect eligible groups nor the eligibility determination process. Local departments of social services will be affected, as will the other local government entities that participate in the FAPT/CPMT processes. The effect will entail adjusting to the steps necessary to use Medicaid reimbursement, including negotiating rates, formulating necessary contracts, and providing the necessary information to the Medicaid care provider.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This

statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

VAC Citation	Federal Citation	Substance of the Suggested Change
	12VAC30-50-480	Whole new section added to case management services for foster care children. Individuals items (target group, areas of state provided, comparability of services, etc.) federally required.
	12VAC30-60-170	Whole new section for utilization control of case management of treatment foster care services.
	12VAC30-80-111 12VAC30-130-900	New payment methodology for new service. State only regulations providing definitions, service description, provider qualifications, record keeping, discharge planning.

Alternatives

Please describe the specific 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.

In 1998, DMAS submitted a whole range of services to be covered under Treatment Foster Care to Health Care Financing Administration for its informal review and comments. HCFA indicated that it would deny coverage of these services should they be formally submitted as a State Plan Amendment. HCFA instead recommended that DMAS propose covering simply Case Management for treatment foster care.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS routinely monitors the implementation of Plan changes as part of its ongoing management activities and will include this new program in that activity.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, nor the assumption of family responsibilities.