



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-50; 12 VAC 30-80; 12 VAC 30-120
Regulation title	Amount, Duration, and Scope of Services: Targeted Case Management; Methods and Standards for Establishing Payment Rates—Other Types of Providers;
Action title	Early Intervention (Part C) Targeted Case Management
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

These fast track stage regulations define a new approach to payment for targeted case management services under Medicaid that supports the Part C early intervention model. The new Early Intervention Targeted Case Management service will meet federal Part C requirements for care coordination as well as federal Medicaid requirements for targeted case management reimbursement. Case managers will be certified by the Department of Behavioral Health and Developmental Services (DBHDS) to ensure that they have the expertise to effectively address the needs of children with developmental delays and their families under the federal Part C program. In addition to coordinating specialized services needed to ameliorate the child's developmental delay, this new targeted case management model will facilitate coordination with the child's primary care provider and support quality preventive services such as well child care, immunizations, and lead testing which are covered under the Early and Periodic Screening, Diagnosis and Treatment program for all children enrolled in Medicaid.

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 with the attached amended State Plan pages entitled Early Intervention (Part C) Targeted Case Management (12 VAC 30-50-415; 12 VAC 30-80-110, and; 12 VAC 30-120-380) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

12/17/12

/s/ Cynthia B. Jones

Date

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.

Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.) was designed to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families. Pursuant to Title 2.2 § 5300 *et seq.* of the *Code of Virginia*, DBHDS was appointed state lead agency for Part C services in the Commonwealth. (§ 2.2-5304 of the *Code* and 12 VAC 35-220-10) The *Code* also designates DMAS as a participating agency with a duty to identify and maximize coordination of public and private resources for early intervention services.

Under the authority of Chapter 890, Item 297 of the 2011 *Acts of the Assembly*, DMAS promulgated an emergency regulation for this issue:

“UUUU. The Department of Medical Assistance Services, in consultation with the Department of Behavioral Health and Developmental Services, shall amend the State Plan for Medical Assistance Services to include early intervention case management. The Department of Medical Assistance Services shall promulgate regulations to become effective within 280 days or less from the enactment date of this act.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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 planned regulatory action creates a new model for Medicaid coverage of case management services for children younger than three years of age who receive services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the *Code of Virginia* in accordance with Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.). These children have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

The planned regulatory action is one component of this Administration’s initiative to revise the system of financing for Part C early intervention services in Virginia to make more efficient use of federal and state funds. Obtaining Medicaid reimbursement for required case management services ensures that the Commonwealth will draw down the maximum available federal Medicaid match for those Part C services currently paid with state-only funds. The Department of Behavioral Health and Developmental Services (DBHDS) has proposed new regulations for certification of Early Intervention Case Managers in tandem with this regulatory action. The Department consulted with DBHDS and other stakeholders in developing these regulations.

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?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This regulatory action represents a shifting of funding from 100% General Fund (GF) to 50% GF/50% Non-General Fund (NGF). This service was already being provided by the Commonwealth's Early Intervention system. By having DMAS assume payment responsibility for children who are eligible for Title XIX (Medicaid), it frees up half of the GF dollars for use for children who are not eligible for these two programs, thereby doubling the numbers of children who can be served with state funds. DMAS met with the affected provider community during the development of the current emergency regulations and they were very supportive of this concept and have received it positively since implementation via the emergency regulations. Consequently, DMAS is not expecting any objections to the fast track process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The sections of the State Plan for Medical Assistance that are affected by this action are Amount, Duration, and Scope of Services: Case Management Services (12 VAC 30-50-415); Methods and Standards for Establishing Payment Rates—Other Types of Providers: Fee for Service Case Management (12 VAC 30-80-110), and; Medallion II MCO Responsibilities (12 VAC 30-120-380).

Currently, there is no defined Medicaid case management service that meets the needs of infants and toddlers with developmental disabilities who are being served by the Part C early intervention program. Community Services Boards (CSBs) are billing Medicaid for targeted case management services for some of these children under provisions designed for individuals receiving services for mental health or intellectual disabilities (12 VAC 30-50-420, 12 VAC 30-50-430, 12 VAC 30-50-440, and 12 VAC 30-50-450). Although many children receiving early intervention services may technically fall within the definition of these other target groups, these case management models were not designed to be used for early intervention participants. These models include requirements that are not applicable to the early intervention population, and service providers are limited to CSBs.

Prior to promulgation of emergency regulations implementing the provisions of this fast track stage regulation, CSBs billed Medicaid for targeted case management under the mental health or intellectual disabilities services models for approximately 35% of the children who are covered by Medicaid and enrolled in the Part C early intervention program, reimbursed at an average rate of \$326.50 per month.

These fast track stage regulations define a new approach to payment for case management services under Medicaid that supports the Part C early intervention model. The new Early Intervention Case Management service will meet federal Part C requirements for care coordination as well as federal Medicaid requirements for case management reimbursement. Case managers will be certified by DBHDS to ensure that they have the expertise to effectively address the needs of children with developmental delays and their families under the federal Part

C program. In addition to coordinating specialized services needed to ameliorate the child's developmental delay, this new case management model will facilitate coordination with the child's primary care provider and support quality preventive services such as well child care, immunizations, and lead testing, which are covered under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program for all children enrolled in Medicaid.

Some infants who receive services through the Part C early intervention program may also receive targeted case management services for high risk pregnant women and children (12 VAC 30-50-410). These services are designed to improve birth outcomes and reduce infant mortality by increasing access to care and promoting continuity of care for women with a high risk pregnancy through the prenatal period and infancy. Providers of this targeted case management service are limited to registered nurses and trained social workers with experience working with pregnant women. Early Intervention Case Management providers will be required to coordinate services with these case managers to avoid duplication of services.

The suggested Early Intervention Targeted Case Management service will reimburse for coordination services that are federally required by the Part C early intervention program to assist children and their families. All local lead agencies under contract with DBHDS or their designees will be eligible to receive Medicaid reimbursement for targeted case management services. All private and governmental fee-for-service providers will be paid according to the same methodology. Early Intervention Targeted Case Management providers will be reimbursed by DMAS outside of the Medallion II managed care contracts. This is consistent with Medicaid reimbursement for services provided by Early Intervention practitioners under EPSDT as well as for most targeted care management.

DMAS anticipates implementing this regulatory action without increased cost to the Commonwealth or localities. The General Assembly established a rate of \$132.00 per month for this service effective July 1, 2012. The projected savings associated with the elimination of payment for case management under the mental health and intellectual disabilities models for children served by the Part C early intervention program will offset the new costs incurred under the new model for the entire Part C population covered by Medicaid. The agency fee scale will define rates that are budget neutral with the amount of money that is currently being spent on early intervention participants who previously utilized Medicaid case management services designed for other target groups.

DMAS did not receive any public comments during the previous Notice of Intended Regulatory Action's comment period. Subsequent to the Governor's approval of its emergency regulation action, DMAS filed its NOIRA with the Registrar on September 12, 2012, for publication in the *Virginia Register* on October 8, 2012. The comment period lasted from October 8, 2012 through November 9, 2012. No comments were received. (Town Hall 3535/5970).

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.*
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The fast track regulatory action is needed to support early intervention services, as provided under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the *Code of Virginia* in accordance with Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.), which are designed to address developmental problems in young children. These services are provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Research suggests that these problems are most effectively addressed by a multidisciplinary approach working in partnership with the child’s family.

Case management is an integral component of the Part C early intervention program. Case management services are designed to assist individuals in gaining access to needed medical, social, educational, and other services. Case management includes comprehensive assessment and periodic reassessment to determine the need for any medical, educational, social, or other services; development and periodic revision of an individualized family service plan (IFSP) to address identified needs; referral and assistance to help the family obtain the needed services; and monitoring and follow-up to ensure that the IFSP is implemented and addresses the identified needs.

DBHDS receives Virginia’s federal Part C allotment and administers the statewide early intervention program through contracts with local lead agencies. The majority of local lead agencies are under the auspices of Community Services Boards (CSBs), along with several universities, public health districts, local governments, and local education agencies.

Qualified providers are needed for case management services to effectively address the special health needs of the Part C population. This new Early Intervention Case Management service is designed to ensure that providers have the specific expertise to effectively address developmental problems in young children and their families as provided for in Part C.

There are no disadvantages to the public or the Commonwealth associated with the suggested 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 on this issue.

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

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.

This regulatory action is not expected to negatively 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.

<p>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</p>	<p>\$0; fund sources are the GF appropriations and federal matching funds (NGF).</p> <p>There are no projected additional costs to the state to implement and enforce the proposed regulation beyond those costs which have already been incurred to implement the emergency regulations. Previously, some children from birth to age three years in need of early intervention services received Medicaid-financed case management designed for individuals receiving services for mental health or intellectual disabilities. The proposed regulation shifts costs from these case management approaches to early intervention case management with no budget impact.</p>
<p>Projected cost of the new regulations or</p>	<p>\$0</p>

changes to existing regulations on localities.	
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Local Community Services Boards and other community based organizations. Individuals enrolled in the Part C early intervention program will be positively impacted by the requirement that case managers possess knowledge specific to infants and toddlers with disabilities and their families.
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 (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.	Approximately 70 small businesses provide early intervention services. Fifty-three providers are enrolled with Medicaid to provide early intervention case management services. These affected small businesses participated with DMAS in developing the current emergency regulations and these fast track regulations do not substantially vary from them.
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. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.	There are no additional costs to affected entities beyond the administrative costs of billing DMAS for services.
Beneficial impact the regulation is designed to produce.	By shifting 50% of the costs of this service on to the Non General Fund in DMAS' budget, this program will be able to serve more children.

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.

The Centers for Medicare and Medicaid Services issued State Plan preprinted pages for states' implementation of targeted case management services; therefore, the main topics (target group, definition of services, and provider requirements, for example) are required to be included. DMAS worked with the affected providers when developing this program and their concerns have been addressed in this proposal.

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; or 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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 30-50-415	N/A.	This new section defines the Early Intervention Targeted Case Management service, the eligible population, and provider qualifications/requirements.
12 VAC 30-80-110		Provides reimbursement method for targeted case management for high risk pregnant women and children, for community mental health/mental retardation services and for individuals participating in the DD waiver.	Adds a reimbursement method for targeted case management services for children in the Part C program who have developmental delays.
12 VAC 30-120-380		Defines Medallion II managed care organization (MCO) responsibilities. Specifies that EPSDT Early Intervention services are provided outside of the MCO network.	Adds Early Intervention Targeted Case Management to the list of services provided outside of the MCO network.

The fast track regulation differs from the emergency regulation in three ways. Two changes were made to accommodate requirements by the Centers for Medicare & Medicaid Services for federal Medicaid reimbursement under the Medicaid state plan.

1. Paragraphs I.3 and I.4 were moved from 12 VAC 30-50-415 to 12 VAC 30-80-110. These paragraphs disallow concurrent billing with other forms of case management designed for other target groups.
2. Language was added to 12 VAC 30-80-110 defining the unit of service for payment as one month and specifying how rates will be monitored and updated.

Modifications made to 12 VAC 30-120-380 clarify that Early Intervention Targeted Case Management services are provided outside of the Medallion II managed care network.