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Fast-Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-130-3000; 12 VAC 30-130-3010; 12 VAC 30-130-3020; 12 VAC 30-130-3030
Regulation title(s)	Behavioral health services; Definitions; Independent clinical assessment requirements, behavioral health level of care determinations and service eligibility; Application to services
Action title	Repeal of VICAP Regulations
Date this document prepared	June 29, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This action repeals the regulations associated with the Virginia Independent Clinical Assessment Program (VICAP). On July 18, 2011, DMAS began requiring the VICAP for several Community Mental Health Rehabilitative (CMHR) services: Intensive In-Home Services, Therapeutic Day Treatment and Mental Health Support Services for individual up to the age of 21. The VICAP was designed to better manage access to these services by requiring providers to

obtain an independent clinical assessment to determine that these CMHR services were clinically appropriate. The VICAP was required before a CMHR provider initiated these CMHR services.

However, after DMAS established that the BHSA’s administrative functions of conducting medical necessity reviews, level of care assessments, and service authorizations could fulfill the role of the VICAP, the VICAP program was terminated on November 30, 2016.

DMAS is in the process of transitioning the CMHR services into DMAS contracted Medicaid Managed Care Organizations (MCOs). Responsibility for the management of CMHR services for individuals enrolled in Commonwealth Coordinated Care (CCC) Plus was transitioned from the BHSA to the CCC Plus MCOs on January 1, 2018. CMHR Services will be included in the Medicaid Managed Care Program, Medallion 4.0, beginning on August 1, 2018. Individuals currently enrolled in the Medallion 3.0 Managed Care program and the Family Access to Medical Insurance Security (FAMIS) program will transition to Medallion 4.0 by December 31, 2018.

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 entitled Repeal of VICAP Regulations (12 VAC 30-130-3000 through 12 VAC 30-130-3030) and adopt the action stated therein. I certify that this fast-track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

June 29, 2018

/signature/

Date

Jennifer S. Lee, M.D., 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.

Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. **Describe 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.*

This purpose of this action is to repeal the regulations associated with the VICAP program, which ended on November 30, 2016.

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?*

This regulatory action is being promulgated as a fast-track action because it is not expected to be controversial. DMAS reduced the number of provider obligations when it ended the VICAP program, and repealing these regulations is a clean-up item.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

The sections of the State regulations that are affected by this action are 12 VAC 30-130-3000 through 12 VAC 30-130-3030, covering the obsolete Virginia Independent Clinical Assessment Program (VICAP). DMAS ended the VICAP requirement for CMHR services on November 30, 2016.

The VICAP was created in 2011 to better manage access to select Medicaid-funded CMHR services: such as intensive in-home, therapeutic day treatment, and mental health support services, for children and adults up to age 21. The community services boards (CSBs) served as partners with the Commonwealth, conducting VICAP assessments during the time period that the VICAP was required for service authorization of select CMHR services.

Based on a comprehensive review of the BHSA’s administrative functions, which include medical necessity review, level of care assessments, and authorization of services, and a DMAS evaluation of data relative to VICAP assessments, it was determined in August 2016 that the VICAP was no longer needed to ensure appropriate access to services. Providers were notified in a DMAS Memorandum dated August 30, 2016 that the VICAP assessment would no longer be required as of December 1, 2016.

As of today, these functions are performed by the CCC Plus Medicaid MCOs for their enrolled members. The BHSA continues to perform these functions for individuals enrolled in Fee-For-Service (FFS) and individuals enrolled in the Medallion 3.0 and FAMIS programs, until those individuals are rolled into the Medallion 4.0 program, beginning on August 1, 2018.

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.

These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community.

The primary advantages of this action, to both the public and the Agency, are the removal of outdated, unnecessary regulations from the Virginia Administrative Code and improved access to care for qualified Medicaid Members.

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 contained in these recommendations.

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 the repeal of these regulations shall apply statewide.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 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.

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	None
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	None
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None
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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.	None
Beneficial impact the regulation is designed to produce.	Reduction in outdated, unnecessary regulations and improved access to care for Medicaid Members.

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 only alternative would be for DMAS to leave these regulations in the Virginia Administrative Code. This option serves no purpose, while there is value in removing the defunct regulations.

Public Participation Notice

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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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; nor 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 and does not increase or decrease disposable family income.

Detail of Changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 30-130-3000 through 12 VAC 30-130-3030	N/A	Regulations Associated with VICAP	Repeals these obsolete regulations.