




COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE 
Assistant Attorney General

DATE: March 29, 2019

SUBJECT: Emergency Regulations – Alternative Benefit Plan for Medicaid Expansion

I have reviewed the attached emergency regulations that would make changes necessary to implement Medicaid expansion in accordance with the directive in the 2018 *Acts of Assembly*, Chapter 2, Item 303.SS.4(a), to “amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, . . . to implement coverage for newly eligible individuals pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act.” Specifically, this regulatory action complies with a federal requirement to create an alternative benefit plan for individuals covered in the Medicaid expansion population. The changes in this regulatory action have been approved by the Centers for Medicare and Medicaid Services in a state plan amendment.

Based on my review, it is this Office’s view that the Director of the Department of Medical Assistance Services, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act (VAPA), and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011(B), which provides that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the

regulation is not exempt under the provisions of subdivision A.4 of Virginia Code § 2.2-4006.

Pursuant to Virginia Code § 2.2-4012, the attached emergency regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. In addition, the emergency regulations shall be effective for no more than 18 months. If the Department intends to continue regulating the subject matter governed by these emergency regulations beyond 18 months, it will be necessary to replace these emergency regulations with regulations promulgated in accordance with Article 2 of the VAPA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-4905.

cc: Kim F. Piner
Senior Assistant Attorney General

Emergency Text

Action:

Expansion-Related Changes - Alternative Benefit Plan

Stage: Emergency/NOIRA

3/27/19 10:19 AM [latest]

12VAC30-50-610. Alternative Benefit Plan: Medicaid Expansion.

A. The state provides alternative benefits to the adult group under the Secretary-approved coverage option under § 1937 of the Social Security Act. Enrollment is mandatory for individuals in the adult group, and the alternative benefit package shall be available statewide.

B. In developing the benefit package for the alternative benefit plan, Virginia reviewed:

1. benefits in its approved state plan as a "benchmark benefit package"
2. the largest plan by enrollment of the three largest small group insurance products in the small group market (as its "base benchmark plan"), and
3. essential health benefits.

C. Alternative benefit plan services.

1. The alternative benefit plan includes Medicaid state plan services including essential health benefits.
2. The essential health benefits included in the alternative benefit plan are: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services including oral and vision care.

D. Virginia makes the following benefits assurances:

1. Virginia assures that the notice to an individual includes a description of the method for ensuring access to EPSDT services, and assures that EPSDT services will be provided to individuals under 21 years of age who are covered under the state plan under section 1902(a)(1)(A) of the Social Security Act.
2. Virginia assures that it meets the minimum requirements for prescription drug coverage in section 1937 of the Social Security Act and implementing regulations at 42 CFR 440.347. Coverage is at least the greater of one drug in each United States Pharmacopeia (USP) category and class or the same number of prescription drugs in each category and class as the base benchmark.
3. Virginia assures that beneficiaries may request and gain access to clinically appropriate prescription drugs when not covered.
4. Virginia assures that when it pays for outpatient prescription drugs covered under an alternative benefit plan, it meets the requirements of section 1927 of the Social Security Act and implementing regulations at 42 CFR 440.345, except for those requirements that are directly contrary to amount, duration, and scope of coverage permitted under section 1937 of the Social Security Act.
5. Virginia assures that when conducting prior authorization of prescription drugs under an alternative benefit plan, it complies with prior authorization program requirements in section 1927(d)(5) of the Social Security Act.
6. Virginia assures that substituted benefits are actuarially equivalent to the benefits they replaced from the base benchmark plan, and that Virginia has actuarial certification for substituted benefits available for CMS inspection if requested by CMS.
7. Virginia assures that individuals will have access to services in Rural Health Clinics (RHC) and Federally Qualified Health Centers (FQHC) as defined in subparagraphs (B) and (C) of section 1905(a)(2) of the Social Security Act.

8. Virginia assures that payment for RHC and FQHC services is made in accordance with the requirements of section 1902(bb) of the Social Security Act.

9. Virginia assures that it will comply with the requirement of section 1937(b)(5) of the Social Security Act by providing at least essential health benefits as described in section 1302(b) of the Patient Protection and Affordable Care Act to all alternative benefit plan participants.

10. Virginia assures that it will comply with the mental health and substance use disorder parity requirements of section 1937(b)(6) of the Social Security Act by ensuring that the financial requirements and treatment limitations applicable to mental health or substance use disorder benefits comply with the requirements of section 2705(a) of the Public Health Service Act in the same manner as such requirements apply to a group health plan.

11. Virginia assures that it will comply with section 1937(b)(7) of the Social Security Act by ensuring that benefits provided to alternative benefit plan participants include, for any individual described in section 1905(a)(4)(C), medical assistance for family planning services and supplies in accordance with such section.

12. Virginia assures transportation (emergency and non-emergency) for individuals enrolled in an alternative benefit plan in accordance with 42 CFR 431.53.

13. Virginia assures, in accordance with 45 CFR 156.115(a)(4) and 45 CFR 147.130, that it will provide as essential health benefits a broad range of preventive services including: "A" and "B" services recommended by the United States Preventative Services Task Force; Advisory Community for Immunization Practices recommended vaccines; preventive care and screening for infants, children and adults recommended by the Health Resources and Services Administration's Bright Futures program/project; and additional preventive services for women recommended by the Institute of Medicine.

E. Virginia will use both managed care and fee-for-service delivery systems for the alternative benefit plan.

1. Virginia certifies that it will comply with all applicable Medicaid laws and regulations, including sections 1903(m), 1905(t), and 1932 of the Social Security Act and 42 CFR Part 438, in providing managed care services through the alternative benefit plan. This includes the requirement for CMS approval of contracts and rates pursuant to 42 CFR 438.6.

2. The managed care delivery system is the same as the CMS-approved 1915(b) managed care waivers. The fee-for-service delivery system is the traditional, state-managed system.

3. Virginia assures that, for each benefit provided under an Alternative Benefit Plan that is not provided through managed care, it will use the payment methodology in its approved state plan.

F. Individuals who have cost-effective group health plans described in section 1906 of the Social Security Act or qualified employer-sponsored plans described in section 1906A of the Social Security Act may request to receive coverage through the Health Insurance Premium Payment program.

G. Any cost sharing described in Attachment 4.18-A of the state plan (12VAC30-20-150) applies to the alternative benefit plan.

H. Virginia makes the following general assurances:

1. Virginia assures that the alternative benefit plan coverage is provided in accordance with federal upper payment limit requirements and other economy and efficiency principles that would otherwise be applicable to the services or delivery system through which the coverage and benefits are obtained.

2. Virginia will continue to comply with all other provisions of the Social Security Act in the administration of the state plan.

3. Virginia assures that alternative benefit plan benefit designs shall conform to the non-discrimination requirements at 42 CFR 430.2 and 42 CFR 440.347(e).

4. Virginia assures that all providers of alternative benefit plan benefits shall meet the provider qualification requirements of the base benchmark plan or the Medicaid state plan.