



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 30-50 Amount, Duration, and Scope of Medical and Remedial Care and Services Department of Medical Assistance Services

Town Hall Action/Stage: 5812 / 9383

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to add licensed school psychologists to the list of allowed providers of outpatient psychiatric services.

Background

Via a Medicaid Memo dated February 17, 2009,² the agency began directly enrolling licensed school psychologists³ as Medicaid and FAMIS participating providers and reimbursing them for the services they provide to eligible Medicaid and FAMIS recipients. Nevertheless, this allowance was not added to 12 VAC 30-50 *Amount, Duration, and Scope of Medical and Remedial Care and Services* (regulation). As DMAS shifted to using the Licensed Mental Health

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See

<https://www.virginiamedicaid.dmas.virginia.gov/ECMPdfWeb/ECMServlet?memospdf=Medicaid+Memo+2009.02.17.pdf>

³ Licensed by the Virginia Department of Health Profession's Board of Psychology.

Professional term, licensed school psychologists were unintentionally⁴ left out of the list of allowed professionals for outpatient psychiatric services. Most licensed school psychologists work in school settings and provide services to Medicaid members through school health services.⁵

A Medicaid Memo dated August 20, 2021⁶ and this regulatory action were prompted when DMAS' Behavioral Health Division was approached by child development clinics who use licensed school psychologists to provide testing services to children in their clinics and were unsure if they were still eligible to be reimbursed through Medicaid for these services. The August 20, 2021 memo specifies that licensed school psychologists are allowed to be reimbursed for psychiatric services (e.g. outpatient psychotherapy and assessment services) provided outside of the school setting in accordance with Section 150 D of the regulation. Current Section 150 D is as follows:

In accordance with 42 CFR 440.60, licensed practitioners (including an LMHP,⁷ LMHP-R,⁸ LMHP-RP,⁹ or LMHP-S,¹⁰ as defined in 12VAC30-50-130) may provide medical care or any other type of remedial care or services, other than physician's services, within the scope of practice as defined by state law.

⁴ Source: DMAS

⁵ Ibid

⁶ See

<https://www.virginiamedicaid.dmas.virginia.gov/ECMPdfWeb/ECMServlet?memospdf=Medicaid+Memo+2021.08.20.pdf>

⁷ "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

⁸ "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling.

⁹ "LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology.

¹⁰ "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work.

DMAS proposes to amend Section 150 D so it would read as follows, where the underlined text would be new language:

In accordance with 42 CFR 440.60, licensed practitioners (including an LMHP,¹¹ LMHP-R,¹² LMHP-RP,¹³ or LMHP-S,¹⁴ as defined in 12VAC30-50-130), or a licensed school psychologist as defined in § 54.1-3600 may provide medical care or any other type of remedial care or services, other than physician's services, within the scope of practice as defined by state law.

Additionally, current Section 140 D.1 of the regulation is as follows:

Psychiatric services can be provided by or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the supervision of an individual licensed under state law to practice medicine or osteopathy: an LMHP, LMHP-R, LMHP-RP, or LMHP-S as defined in 12VAC30-50-130. Medically necessary psychiatric services shall be covered by the Department of Medical Assistance Services (DMAS) or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the health care professionals listed in this subdivision.

DMAS proposes to amend Section 140 D.1 so it would read as follows, where the underlined text would be new language:

Psychiatric services can be provided by or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the

¹¹ "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

¹² "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling.

¹³ "LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology.

¹⁴ "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work.

supervision of an individual licensed under state law to practice medicine or osteopathy: an LMHP, LMHP-R, LMHP-RP, or LMHP-S as defined in 12VAC30-50-130, or licensed school psychologist as defined in § 54.1-3600. Medically necessary psychiatric services shall be covered by the Department of Medical Assistance Services (DMAS) or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the health care professionals listed in this subdivision.

Estimated Benefits and Costs

According to DMAS, there have been no known denials of Medicaid reimbursement for psychiatric services provided by school psychologists outside of the school setting. The proposed amendments to the regulation clarify what has been intended. Thus, the proposed amendments to the regulation would not likely have a substantial impact on what occurs in practice, but would be beneficial in that clarity for the public would be enhanced.

Businesses and Other Entities Affected

The proposed amendments pertain to the 97 licensed school psychologists in the Commonwealth.¹⁵

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments neither increase cost nor reduce revenue. Thus, adverse impact is not indicated.

Small Businesses¹⁷ Affected:¹⁸

The proposed amendments do not appear to adversely affect small businesses.

¹⁵ Data source: <https://www.dhp.virginia.gov/about/stats/2022Q1/04CurrentLicenseCountQ1FY2022.pdf>

¹⁶ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

¹⁸ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills

Localities¹⁹ Affected²⁰

The proposed amendments neither disproportionately affect any particular localities, nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

²⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.