Virginia
Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services
VAC Chapter Number:	12 VAC 30-50, 30-60, 30-130
Regulation Title:	Amount, Duration, and Scope of Services; Methods and Standards to Assure High Quality of Services
Action Title:	Community Mental Health and Substance Abuse Treatment Services
Date:	12/16/2002;

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-One (2002), 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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

The proposed regulations will improve the delivery of community mental health and substance abuse treatment for pregnant and postpartum women and remove unnecessary regulatory requirements. The changes are the result of a workgroup that included public and private providers, state agency representatives, and consumers. The more significant changes are: requirements that providers make services available 24-hours per day and accept all patients regardless of their ability to pay are being removed; remove the requirement that case management services be coupled with mental health support services; add needed minimum staff qualifications; remove requirement for a history of hospitalizations from the service eligibility criteria; clarify that mental heath support services may be rendered in order to maintain recipients in their communities; revise services definitions; clarify/revise provider qualifications; modify annual service limits as appropriate; and modify provider licensing requirements as appropriate.

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 also provides, in the Administrative Process Act (APA) §§2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

Pursuant to the regulatory review requirements of Executive Order 21(02), Periodic Review of Existing Regulations, DMAS, in collaboration with DMHMRSAS, reviewed its controlling regulations for its community mental health services. A number of issues were identified in discussions with a dedicated work group comprised of state agency staff, providers, and affected consumers.

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 regulations for the community mental health and substance abuse treatment services have not been revised since 1997. Several issues have been identified that need revision, such as duplicative language, impracticable and unnecessary requirements for service provision. Both participating providers and consumers have requested these revisions.

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 for Medical Assistance that are affected by this proposed regulatory action are: the Amount, Duration, and Scope of Services (Attachment 3.1 A&B,

Supplement 1 (12 VAC 30-50-130, 50-226)) and Case Management for Services (Attachment 3.1 A&B, Supplement 2 (12 VAC 30-50-420-, 50-430, 50-510)); Methods and Standards to Assure High Quality of Care (Attachment 3.1-C (12 VAC 30-60-61, 60-143, 60-147)); as well as state only regulations (12 VAC 30-130-550, 130-565, 130-570).

The following changes are being promulgated to revise the current regulations. These regulation revisions are needed to improve the services delivered to recipients and to improve clarity for service providers:

References to DMHMRSAS licensing requirements are being removed as they are duplicative, occurring twice in the services and provider qualification regulations;

References to twenty-four hour response capability for providers are being removed from 12 VAC 30-130-570 and 12 VAC 30-130-565 as this requirement unduly restricts providers to only public providers and prohibits private providers from rendering the same service;

References to the requirement for serving individuals, regardless of ability to pay, are being removed from 12 VAC 30-130-570 as this can also have the effect of restricting providers to only public providers;

References to who can perform an evaluation and assessment for substance abuse services are being moved from 12 VAC 30-130-570 to 12 VAC 30-130-565 as it is currently misplaced; and

References regarding mental retardation are being removed from 12 VAC 30-130-570. In 2000, CMS required that all mental retardation services be moved to the mental retardation waiver program rather than State Plan covered services. Removal of this reference was overlooked when the other changes were made.

Individual services are revised as follows (input was obtained from the DMAS sponsored workgroup):

1. Case Management: Eliminating the requirement that case management services must be provided in order to receive MH Support Services. Also, the limitations regarding who can provide case management services for Mental Health Support Services will be eliminated.

2. Mental Health Support Services:

   - Adding the minimum staff qualifications regarding who may deliver mental health support services; a Qualified Mental Health Professional (QMHP) may perform the assessment, sign the Individual Service Plan (ISP), and supervise the care, a paraprofessional may also deliver the service.

   - Removing the requirement for "a history of hospitalization" from the service eligibility criteria;

- Changing the monthly limitation of 31 units (1 unit = 1 to 3 hours) to a yearly limit of 372 hours to allow for more intense initial service delivery; and

- Adding language clarifying that MH Support Services may be delivered to maintain the recipient in the community.

3. Day Treatment/Partial Hospitalization:

   - Adding language clarifying that it can be delivered to maintain the recipient in the community; and

   - Revising the service definition.

4. Psychosocial Rehabilitation:

   - Removing "for adults" from the service title; and

   - Adding review requirements for certain services, requiring services review by a licensed mental health professional at specified intervals to insure proper service utilization.

5. Crisis Intervention Services: Adding pre-screeners or QMHPs as providers.

6. Intensive Community Treatment: Clarification of the rationale regarding why services in the clinic must be documented.

7. Intensive In Home:

   - Adding clarifying language regarding which services may be rendered in the community;

   - Adding the statement "services are directed toward the treatment of the eligible child" to 12 VAC 30-50-130;

   - Changing the minimum requirement from 5 hours of service per week to 3 hours per week and requiring documentation of the need for more intensive services when provided in outpatient clinics;

   - Removing the specifications for caseload size and requiring sufficient staff to be available to meet the identified needs of the child; and

   - Adding to 12 VAC 30-60-61 that the Intensive In-Home services provider be licensed by DMHMRSAS as an Intensive In Home provider.

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 proposed regulations are intended to keep consumers in the community thereby avoiding more expensive hospitalizations. The advantage of these proposed regulations is improvement in the ease of delivering services. Unnecessary regulations are being removed. It is anticipated that provider efficiency will improve with reducing regulatory requirements. There are no anticipated disadvantages to the public or the Commonwealth.

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.

There are no anticipated additional costs to the proposed regulations. These changes may, in fact, reduce costs by keeping individuals out of hospitals; however, any resulting reductions would not be realized immediately but may be realized over several years of operation of these revised regulations.

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 Section	Proposed Change	Reason
12 VAC 30-50-130	Editorial change.	
12 VAC 30-50-226	Revised definitions; service descriptions and recipient	

	criteria are added; service limits added.	
12 VAC 30-50-420	Case management provider qualifications modified/ expanded; provider staff knowledge/skills/abilities moved; removed 24-hour access; removed provision of services to all patients regardless of ability to pay/Medicaid eligibility; service limit/ restriction removed.	
12 VAC 30-50-430	Case management provider qualifications modified/ expanded; provider staff knowledge/skills/abilities moved; removed requirement for 24-hour access; removed provision of services to all patients regardless of ability to pay or their Medicaid eligibility; service limit/ restriction removed.	
12 VAC 30-50-510	Service limit changed; lifetime limit removed; recipient criteria set out; provider qualifications set out.	
12 VAC 30-60-61	Provider standards set out; billing unit language removed; caseload standards removed.	
12 VAC 30-60-143	General provider standards set out; removed linkage to state regulations that are being repealed; required level of provider professional licensing set out; patient criteria removed; standards set out for mental health support services.	
12 VAC 30-60-147	Editorial changes.	

12 VAC 30-130-550	Text repealed as no longer needed.	
12 VAC 30-130-565	Allows women who used substances within 6 weeks of incarceration to be eligible for the service.	
12 VAC 30-130-570	Text repealed as no longer needed.	

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.

Alternatives were discussed between DMAS, DMHMRSAS, affected providers, and consumers who participated in the dedicated workgroup. Some of the alternative policies that were considered in the development of this package are:

1. The workgroup considered leaving in the requirement for "a history of hospitalization" as a requirement for receipt of mental health support services. This is recommended to be removed.

2. The workgroup considered discontinuing the coverage of mental health support services in assisted living facilities. This is recommended to remain in these regulations.

3. The workgroup discussed having a monthly limit for mental health services as opposed to an annual limit. The annual limit is recommended here as the preferred policy as it allows more intense services to be delivered at the initiation of services.

4. The workgroup considered allowing some intensive community treatment services to be delivered in mental health clinics.

5. The workgroup considered the minimum requirement of five hours of service per week for intensive in-home services. The group recommended the removal of this minimum amount of service to allow flexibility. DMAS is proposing a minimum of three hours be established.

Public Comment

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

DMAS comment period for its Notice of Intended Regulatory Action ran from May 20, 2002, through June 20, 2002. No comments from the public were received about these regulations during this time period. Comments received from the work group are addressed elsewhere in this document.

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 will include the monitoring, in collaboration with the affected industry, of this regulatory action as part of its ongoing management of State Plan policies and its Executive Order 21(02) activities.

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.

The proposed regulations will support keeping individuals in their homes and communities, thus keeping them with their families. The proposed regulations will assist in helping individuals in their recovery and promote stability. These improvements to these existing regulations are expected to strengthen parental authority and rights; encourage self-sufficiency, self-pride and may enhance individuals' assumption of responsibility for themselves, their spouses, and their children. It is not expected to affect disposable family income.