



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

12 VAC 35-225 Requirements for Virginia Early Intervention System
Department of Behavioral Health and Developmental Services
Town Hall Action/Stage: 5566/9018
January 19, 2021

Summary of the Proposed Amendments to Regulation

The State Board of Behavioral Health and Developmental Services (Board) proposes to amend 12 VAC 35-225 *Requirements for Virginia Early Intervention System* (regulation) in order to implement changes pursuant to a periodic review.¹ In particular, the Board seeks to include managed care organizations (MCOs) in the current regulatory requirements for obtaining parental consent to bill Medicaid for Early Intervention Part C services and supports, clarify that Part C service providers enroll with MCOs as well as DMAS, and to clarify the Medicaid appeals process. The requirements for providers arise from MCO contracts and have been implemented by the Virginia Interagency Coordinating Council for Early Intervention Services.²

Background

Early Intervention Part C provides infants and toddlers (up to age three) who are found to have developmental delays with a wide range of services and supports based on the needs of the child and family.³ These services are broadly authorized by the Individuals with Disabilities Education Act, which was enacted by Congress in 1990 to ensure that children with disabilities are provided with free appropriate public education that is tailored to their individual needs.⁴ As part of Medicaid reform, the Department of Medical Assistance Services (DMAS) brought Part

¹ See <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1884>.

² See <http://www.infantva.org/wkg-vice.htm> Part C service providers make up 20% of council membership.

³ See <http://www.infantva.org/ovw-WhatIsPartC.htm>.

⁴ See <https://sites.ed.gov/idea/about-idea/>. Part C of the act applies to infants and toddlers while part B applies to children in educational environments; hence the early intervention services covered by this regulation are collectively referred to as “Part C services.”

C services under managed care.⁵ As a result, DMAS reports that most children currently receiving Part C services are insured by MCOs that are contracted by DMAS to provide Medicaid coverage.

Subsequent to its periodic review of the regulation, the Board proposes to update the regulation to include references to MCOs in places that previously only referred to DMAS. Specifically, in section 240 *Use of public benefits or public insurance*, the Board seeks to clarify that parental consent regarding (disclosure of) the child's personal information would be required to bill the MCO or, if the child is not enrolled in managed care, to bill DMAS. Similarly, section 260 *Written notification* would be amended to clarify that parents must receive written notification regarding their right to withdraw consent for disclosure of their child's personally identifiable information to the MCO or, if the child is not enrolled in managed care, to DMAS.

Section 280 *Provider billing for early intervention services* would be amended to clarify that early intervention practitioners and case managers would have to enroll with the MCO as well as DMAS in order to receive reimbursement for Part C services. Since Part C services are already covered under managed care, most providers are likely already aware of this requirement. The proposed changes would conform the text of the regulation to current practice.

Lastly, the Board also seeks to update section 420 *Appeal to the Department of Medical Assistance Services* to clarify that appeals to DMAS or MCOs are only applicable to Medicaid or FAMIS recipients seeking to contest service decisions. Other complaints regarding an early intervention provider's eligibility determination are covered under sections 380, 390 and 400, which remain unaffected by this regulatory action. In addition, section 420 would be changed to explicitly indicate that for individuals enrolled in a Medicaid MCO, the internal appeal process for the MCO must be exhausted or deemed exhausted before appealing to DMAS.

Estimated Benefits and Costs

The proposed amendments do not appear to change the costs to parents of children receiving Part C services, to providers of Part C services, or to the Commonwealth. To the extent that the proposed amendments serve to clarify the process for obtaining consent, the process for

⁵ 2013 Acts of Assembly Chapter 806 (Budget Bill) Item 307.RRRR.4.: <https://budget.lis.virginia.gov/item/2013/1/>.

provider registration with Medicaid, or the Medicaid appeals process, the proposed changes would benefit parents as well as providers.

Businesses and Other Entities Affected

As mentioned above, families of children receiving Part C services as well as Part C service providers would be affected by the proposed amendments. The Department of Behavioral Health and Developmental Services contracts with 40 local lead agencies to facilitate the statewide implementation of early intervention services. These local agencies as well as their employees and contractors would be impacted by the proposed amendments, in that it would change the information they provide to the families they work with. However, the local agencies are unlikely to face any substantive new costs as a result.

Small Businesses⁶ Affected

Although some Part C service providers may be employed in a small business setting, the proposed amendments only serve to clarify the regulation and do not create any new costs.

Localities⁷ Affected⁸

The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment

The proposed amendments are unlikely to affect the overall number of employed Part C service providers.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

Legal Mandates

General: The Department of Planning and Budget 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,

⁶ 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.”

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

Adverse impacts: 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 within the 45-day period.

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 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.