Virginia Regulatory Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC_30-130-800 et.seq.
Regulation title	Client Medical Management
Action title	2012 Client Medical Management Update
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Preamble

The APA (Code of Virginia § 2.2-4011) states 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 § 2.2-4006.

1) Please explain why this is an emergency situation as described above.
2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Section 2.2-4011 of the *Code of Virginia* states 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 § 2.2-4006(A)(4). The 2012 *Acts of the Assembly*, Chapter 3, Item 307 UU directed the agency to make programmatic changes in order to ensure appropriate utilization, prevent abuse, and promote improved and cost efficient medical

management of essential Medicaid client health care. This Budget Item included emergency regulatory authority. This action complies with that directive.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled 2012 Client Medical Management Update (12 VAC 30-130-800 et seq.) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

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. [Please cite the authority you are using to promulgate an emergency regulation.]???

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 and 325, 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.

Pursuant to U.S.C. 1396n(a)(2) and 42 CFR § 431.54(e), the Department of Medical Assistance Services (DMAS) is permitted to have programs that restrict Medicaid individuals who have been found to be over-utilizing either physician or pharmacy services, or both. DMAS' Client Medical Management program operates under the authority of a § 1915(b) (of the *Social Security Act*) limited waiver granted by CMS. The waiver permits DMAS to deny the standard freedom of choice of providers to these identified recipients and restrict them to specified physicians or pharmacies, or both.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Department is promulgating these emergency regulations to comply with Item 307 UU of Chapter 3 of the *2012 Acts of the Assembly*. This statute implements the requirement to make programmatic changes to the Client Medical Management program in order to ensure appropriate utilization, prevent abuse, promote improved and cost efficient medical management of essential health care, and assist and educate beneficiaries in appropriately utilizing medical and pharmacy services.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

These recommended changes to the Medicaid Client Medical Management (CMM) program are not essential to protect the health, safety, or welfare of citizens. They could be essential to protect the health, safety, and welfare of Medicaid clients who abuse prescription drugs, however. The current regulations promote case management of Medicaid individuals who have been identified as abusers of specific medical services provided by physicians and pharmacists. The current regulations lack an education component, therefore leaving enrollees with only the option of being restricted for a certain period of time to a specific physician or pharmacy. The revisions provide for a two-tier system, allowing for an educational component as well as restrictions. The revised regulations provide for the notification of potential abusers that they have been identified and will be monitored closely for a certain period of time. It is anticipated that the revised regulations will assist recipients, physicians, and pharmacists as they and CMM work together to identify the recipients' utilization patterns and educate them on appropriate use of services.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The regulations that are affected by this action are the Client Medical Management program regulations (12 VAC 30-130-800 et. seq.)

Currently, the regulations provide for administration of the Client Medical Management program. CMM guidelines lock-in recipients, to one physician/pharmacy, for a minimum of 36 months. At the end of the lock-in period, if the recipient is deemed to be still inappropriately utilizing services, he is re-enrolled for another 36 months. Despite this approach, the recidivism rate has steadily risen and recipients are remaining in lock-in for years.

Furthermore, providers have also become disinterested in being designated as a recipient's assigned physician or pharmacist while the abuse is ongoing.

Individuals who are determined to be utilizing physician or pharmacy services beyond the specified limits will be evaluated to determine if their utilization warrants being locked in to specific providers. Individuals exceeding 200% of the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period of time exceeding four weeks would be locked in to one pharmacy provider. Individuals having two occurrences of having prescriptions for the same drug filled two or more times on the same or subsequent day would also be restricted. Individuals who utilize services from three or more physicians/pharmacies in a three month time period would be restricted. Individuals who receive more than 24 prescriptions

in a three month period would be restricted. Finally individuals receiving more than 12 psychotropic prescriptions, more than 12 analgesic prescriptions, or more than 12 controlled drug prescriptions in a three month period would be restricted.

These changes update references to the computer subsystem that will generate individuals' utilization reports for the purpose of data analysis. A new exception is provided for individuals to not be restricted when evidence indicates that the prescription or medical services utilization, or both, are appropriate for their diagnoses and medical conditions. This action provides for a two tiered system, allowing for both restriction and education/monitoring. The new restriction period will last for 24 months. DMAS anticipates that reducing the lock-in period to 24 months will counter recidivism, assure providers that recipients are being educated about their utilization patterns in a timely manner, and prevent recipients from stagnating in the CMM program. A 24 month period will also allow for the review of utilization within the first 12 months of the CMM lock-in to determine if a recipient's behavior has been modified.

This action provides for individuals to visit physicians or specialists other than their designated restriction physician upon written referral from the restriction physician. Provision is also retained for individuals who have legitimate medical necessity for high numbers of prescription drugs and visits to numerous physicians to appeal a lock-in status and have it removed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
12VAC 30-130-800		Definitions contain outdated terminology.	Terminology is updated to include person-centered references; definitions are added to explain new terms used in the updated text.
12 VAC 30-130-810		CMM for individuals. Refers to outdated computer subsystem that generates individuals' utilization reports; restriction period is 36 months; two or more occurrences of seeing two or more physicians of the same specialty on the same or subsequent days for the same/similar diagnoses; etc.	Computer subsystem is updated; provision is made for multiple data sources; exception to restriction is provided when individual demonstrates medical necessity; restriction period is reduced to 24 months; use of emergency hospital services for non-emergency care during a three month period; patterns of noncompliant use of services. Restricted individuals will be notified of the restriction and shall have the right to appeal.
12 VAC 30-130-820		CMM for providers. Providers' billing patterns are analyzed for patient visits, prescriptions issued, outpatient/emergency room visits, lab/x-rays ordered, other diagnostic procedures, hospital admissions and referrals.	Updates are made to the designated computer subsystems that are to provide data to be analyzed. Technical updates are made to replace recipient/patient with individual or client for more person-centered language.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

DMAS could leave the restriction time period at 36 months but this has already been shown to lack long-term effectiveness. Longer restriction periods could be seen as being unduly punitive. The absence of the education component may have contributed to the current recidivism that has steadily increased over the years.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a panel has been used in the development of the emergency regulation and whether it will also be used in the development of the proposed regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to Vanea Preston, Manager, Division of Program Integrity, DMAS, 600 E. Broad Street, Suite 1300, Richmond, VA 23219 (804) 786-1711; (fax) (804) 786-1680 or Vanea.Preston@dmas.virginia.gov . Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Assess the potential 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; or 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.