Virginia Regulatory Town Hall

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Fast Track Proposed Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30, Chapters 50 and 141
Regulation title	Amount, Duration, and Scope of Medical and Remedial Services; Amount, Duration, and Scope of Selected Services, and Family Access to Medical Insurance Security Plan
Action title	Medicaid and FAMIS Prior Authorization Revisions
Document preparation date	December 15, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The 2003 Appropriation Act (Item 322 J) directed the Department of Medical Assistance Services (DMAS) to collect and report information on all new prior authorization (PA) requirements implemented on or after the start of state fiscal year (FY) 2004. This action proposes to modify regulations related to outpatient psychiatric services based on the findings of the study to make the process more efficient, give providers more timely information, and improve service to Medicaid recipients.

On June 1, 2003, DMAS issued a Medicaid Memo which implemented the prior authorization requirement for non-emergency outpatient Magnetic Resonance Imaging (MRI), Positron Emission Tomography (PET), and Computerized Axial Tomography (CAT) scans. This regulatory change will clarify the intent of the 2003 DMAS memo by specifying that MRI scans include Magnetic Resonance Angiography (MRA) scans and CAT scans include Computed

Tomography Angiography (CTA). It also changes one of the words which form the acronym CAT from Computer to Computerized. Therefore the Agency is making the necessary regulatory changes.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages *(*Amount, Duration, and Scope of Medical and Remedial Services (12VAC30-50) and Family Access to Medical Security Insurance Plan (FAMIS) (12VAC30-141)*)* and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act and is full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

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, 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.

The 2003 Appropriation Act (Item 322 J) directed DMAS to collect and report information on all new PA requirements implemented on or after the start of state fiscal year (FY) 2004. As a result of the findings of this study, the Department is making the regulatory changes necessary to make the PA process for outpatient psychiatric services more efficient for providers. In this regulatory action, DMAS is modifying the service limit for outpatient psychiatric services during the patient's first treatment year.

Item 325 WW of the 2003 Appropriations Act directed DMAS to promulgate emergency regulations to require prior authorization of MRI, CAT, and PET scans. It is not changing its MRI/CAT/PET scan preauthorization program, but it provides clarification for its providers.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

One purpose of this action is to implement changes to the PA procedures for outpatient psychiatric services to make the process more efficient for providers. The significant change is modifying the service limit on outpatient psychiatric services and allowing for 26 visits in the first year of treatment without prior authorization, and up to an additional 26 visits during the first year of treatment with authorization. All outpatient psychiatric services rendered after the first treatment year will continue to require prior authorization.

This PA change will protect the health and welfare of Medicaid recipients as they initially access outpatient psychiatric services. The provider will be able to thoroughly evaluate the patient's needs, and develop and implement a treatment plan during the 26 initial visits before PA is required.

When the codes were selected for the PA of MRI/CAT/PET scans, DMAS included both MRA and CTA procedure codes. These procedures were not considered by DMAS as different from other MRI or CAT scans. This regulatory action will also provide clarification of the DMAS MRI/CAT/PET scan preauthorization program which is currently in place.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Because the Department obtained input from providers during the study on more efficient PA requirements, it is anticipated that there will be no opposition to these requested regulatory changes to the PA processes for outpatient psychiatric services provided to Medicaid fee-for-service clients.

Further, DMAS does not expect opposition to the regulation pertaining to the MRI/CAT/PET scan preauthorization program. The regulations are already in place. No additional scans have been added to the PA process. This regulatory change merely provides clarification to providers of the Agency's intent for the outpatient scan preauthorization program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The sections of the State Plan for Medical Assistance that are affected by this regulatory action include the Amount, Duration, and Scope of Medical and Remedial Services (12VAC30-50. Family Access to Medical Security Insurance Plan (FAMIS) (12VAC30-141) is also revised.

To understand providers' satisfaction or frustration with the current PA process, DMAS invited provider associations for each service category to attend focus groups. The focus groups were well attended and yielded substantial information on how to provide a more efficient process. In addition, DMAS conducted interviews with key staff at DMAS and the current PA contractor, conducted a confidential survey, and reviewed data, manuals, and operating materials.

The result of the research effort yielded valuable information regarding difficulties experienced by providers. DMAS has put that knowledge to work and is making appropriate adjustments to improve PA in two ways, through process changes and through policy changes. Changes to the process are intended to address providers' concerns and make the process more efficient. In addition, policy changes and clarifications are being implemented to provide a better, more straightforward system.

Outpatient psychiatric services are currently limited to an initial availability of five sessions, without PA during the first treatment year. This regulatory action will change that to an initial availability of 26 sessions, without PA during the first treatment year. Currently, an additional extension of up to 47 sessions during the first treatment year must be prior authorized by DMAS or its designee. This regulatory action will change that to an additional extension of up to 26 sessions during the first treatment year.

In 2003, DMAS initiated prior-authorization requirements for non-emergent, outpatient MRI, CAT, or PET scans because past experience, with these high cost tests, indicates that the ready access to these scans, coupled with a decreased patient risk, may have contributed to indiscriminate overuse of these costly tests. When DMAS began work on the outpatient scan preauthorization program, and regulations were initially put into place, the Agency stated that it would preauthorize all outpatient, non-emergent MRI/CAT/PET scans. In fact, DMAS had limited the scans selected for preauthorization to outpatient, non-emergent scans used to diagnose a physical illness or injury, and included MRAs and CTAs because these procedures are diagnostic. The Agency never considered MRAs and CTAs as significantly different from any other diagnostic MRI or CAT scan. A MRA is an MRI scan of the blood vessels and utilizes MRI technology to diagnose and aid in the treatment of heart disorders, stroke, and blood vessel diseases. A CTA is a scan that uses x-rays to visualize blood flow in both arteries and veins throughout the body and combines the x-rays with computeriezed analysis of the images. CTAs are used to diagnose arterial disease, visualize blood flow to the major organs, identify aneurysms, a weakening of the wall of the blood vessel causing the blood vessel to bulge and possibly burst, detect atherosclerotic disease that has narrowed the arteries in the legs, and to detect clots in veins, to mention a few uses. Scans that are performed for radiation therapy placement, or as guidance to another invasive treatment, such as a CT guided needle biopsy, or

are otherwise more treatment related than diagnosis related, were not included for preauthorization. This regulatory action provides needed clarification of the MRI/CAT/PET scan preauthorization program currently in place.

This action also changes one of the words which form the acronym CAT from Computer to Computerized. It was incorrectly entered into the Virginia Administrative Code in 2003 and was not caught during the internal Agency review. The correct terminology is "computerized." This regulatory change is trying to clarify that point.

Issues

Please identify the issues associated with the proposed regulatory action, including:
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 indicate.

There are no disadvantages to the public for the approval of the proposed regulations for prior authorization. The advantages to the public are that the PA process will be more efficient for providers and more in line with industry standards. For outpatient psychiatric services, Medicaid currently pays for five visits in the first year of treatment before a PA is required. While this appears straightforward, it is actually difficult for providers to navigate. The difficulty is that the current limit of five is reached quickly, is not per provider, and providers do not know if a recipient has already received five visits with another provider. Likewise, DMAS does not know that the first five visits have been provided until the Agency has been billed.

There are no disadvantages to the public for the approval of the proposed regulations pertaining to outpatient, non-emergent MRI/CAT/PET scans. The PA process has not changed. This regulatory action merely clarifies the standards which providers are already following. The advantage to both the providers and DMAS is that the providers will have a better understanding of the regulation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

For PA of outpatient psychiatric services:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Projected cost to the State is minimal if any. The system work necessary is envisioned to be normal maintenance rather than software changes.
Projected cost of the regulation on localities	There is no cost to localities to implement this regulation

Description of the individuals, businesses or other entities likely to be affected by the regulation	Providers of outpatient psychiatric services include Psychiatrists, Clinical Psychologists, Psychiatric Clinical Nurse Specialists, Licensed Clinical Social Workers, Community Service Boards (CSBs), Licensed Professional Counselors, and Marriage and Family Therapists
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	Psychiatrists – approximately 600 Clinical Psychologists – 1,104 Psychiatric Clinical Nurse Specialists – 98 Licensed Clinical Social Workers – 1,769 Licensed Professional Counselors -1,117 Marriage and Family Therapists – 12 Community Service Boards (CSBs) - 40 It would be reasonable to assume that most, if not all of these providers would be considered a small business entity or affiliated with a small business entity.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	DMAS anticipates that this regulation change will decrease cost to providers rendering services during the patients first treatment year because they would not have to obtain preauthorization until after 26 visits have occurred rather than only five visits. After the initial 26 visits, all visits must be preauthorized and this policy represents no substantial change for providers.

For outpatient, non-emergent MRI/CAT/PET scans:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There is no projected cost to implement this clarification in the proposed regulation.
Projected cost of the regulation on localities	There is no cost to localities to implement this regulation.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Hospitals, physicians ordering the scans, radiologists, and scanning facilities enrolled as independent labs with the program.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	Hospitals: 98 Radiologists: approximately 4,150 Independent Labs: 152 The above providers actually provide the service and can bill for the service. Ordering physicians are only affected by the clarification of what is considered a non-emergent outpatient scan for the purpose of obtaining preauthorization. Ordering physicians do not bill for MRI/CAT/PET scans. DMAS does not maintain information regarding which providers are small business entities. However, it would be reasonable to consider independent labs and radiologists being a small business or affiliated with a small business entity.

All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	Not applicable. There are no new projected costs to this regulation clarification as no new changes are being made.

Alternatives

Please describe any viable 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.

The alternative would be to leave the current system in place, which provider organizations have indicated in focus groups and surveys, that the system is burdensome to an efficient process and efficient delivery of services to Medicaid recipients.

For all outpatient, non-emergent MRI/CAT/PET scans, the alternative would be to leave the language as it currently is and continue dealing with provider confusion about what outpatient scans require preauthorization. The Agency is only seeking to clarify for the providers that the preauthorization requirements apply to non-emergent, outpatient MRI/CAT/PET scans ordered for the purpose of diagnosing physical illness or injury and to clarify that MRA and CTA scans ordered for this same purpose also require preauthorization. It is believed that this clarification is necessary to alleviate provider frustration and confusion related to the current regulation which states all non-emergent outpatient scans require preauthorization, when in fact, that is not the case.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action, will not have any impact on the institution of the family and family stability including strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children; encouraging or discouraging economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents, strengthening or eroding the marital commitment; and increasing or decreasing disposable family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-50-10 3.		Computer Axial Tomography (CAT) scans.	Changed to Computerized Axial Tomography (CAT) scans.
12VAC30-50-120 B.		Computer Axial Tomography (CAT) scans.	Changed to Computerized Axial Tomography (CAT) scans
12VAC30-50-140 D.		Psychiatric services are limited to an initial availability of five sessions, without PA during the first treatment year. An additional extension of up to 47 sessions during the first treatment year must be prior authorized by DMAS. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS. Medically necessary psychiatric services shall be covered when prior authorized by DMAS for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.	Outpatient psychiatric services are limited to an initial availability of 26 sessions, without PA during the first treatment year. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS or its designee. Medically necessary psychiatric services shall be covered when prior authorized by DMAS or its designee for individuals younger than 21 years of age when the need for such services has been identified in an EPSDT screening.

12VAC30-50-140 O.		MRIs do not specify Magnetic Resonance Angiography (MRA). Computer Axial Tomography (CAT) scans. CAT scans do not specify Computed Tomography Angiography (CTA). No purpose for outpatient, non-emergent MRI/CAT/PET scans is specified.	MRIs specifically include Magnetic Resonance Angiography (MRA). Changed to Computerized Axial Tomography (CAT) scans. CAT scans specifically includes Computed Tomography Angiography (CTA). The purpose of an outpatient, non-emergent MRI/CAT/PET scan is to diagnose a disease process or physical injury.
12VAC30-50-150 D.1.		Other practitioners' services (psychological services and psychotherapy) services are limited to an initial availability of five sessions, without PA during the first treatment year. An additional extension of up to 47 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding treatment year when prior authorized by DMAS. Other practitioners' services (psychological services and psychotherapy) are authorized by DMAS.	Other practitioners' services (psychological services and psychotherapy services) are limited to an initial availability of 26 sessions, without PA during the first treatment year. An additional extension of up to 26 sessions during the first treatment year must be prior authorized by DMAS or its designee. The availability is further restricted to no more than 26 sessions each succeeding year when prior authorized by DMAS or its designee. Other practitioners' services (psychological services and psychotherapy services) are authorized by DMAS "or its designee."

12VAC30-141-500 D. 1		nonemergency Magnetic Resonance Imaging Computer Axial Tomography scans Positron Emission Tomography scans	Changed to non-emergency Magnetic Resonance Imaging, including Magnetic Resonance Angiography (MRA) Changed to Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA) Changed to Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury