

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-610).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: September 19, 2019, through March 18, 2021.

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Preamble:

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 of the Code of Virginia.

Chapter 2, Item 303 SS 4 a of the 2018 Acts of Assembly directs the Department of Medical Assistance Services (DMAS) to "...amend the State Plan for Medical Assistance ... to implement coverage for newly eligible individuals..." Item 303 SS 4 f states that DMAS "...shall have the authority to promulgate emergency regulations to implement these changes within 280 days or less ..."

This regulatory action adds the alternative benefit plan (ABP), which is available to individuals who are covered by Medicaid expansion, to the Virginia State Plan for Medical Assistance in order to implement Medicaid expansion. The Centers for Medicare and Medicaid Services (CMS) requires state Medicaid agencies to create an ABP for expansion populations. The changes included in this regulatory action have already been reviewed and approved by CMS.

Part X

Alternative Benefit Plan

12VAC30-50-610. Alternative benefit plan: Medicaid expansion.

A. The Commonwealth provides alternative benefits to the adult group under the coverage option under § 1937 of the Social Security Act (42 USC § 301 et seq.) approved by the Secretary of Health and Human Services. Enrollment is mandatory for individuals in the adult group, and the alternative benefit package shall be available statewide.

B. In developing the benefit package for the alternative benefit plan, the Commonwealth reviewed:

1. Benefits in its approved State Plan as a "benchmark benefit package";
2. The largest plan by enrollment of the three largest small-group insurance products in the small-group market as the "base benchmark plan"; and
3. Essential health benefits.

C. Alternative benefit plan services.

1. The alternative benefit plan includes Medicaid State Plan services, including essential health benefits.
2. The essential health benefits included in the alternative benefit plan are ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

D. The Commonwealth makes the following benefits assurances:

1. The Commonwealth assures that (i) the notice to an individual includes a description of the method for ensuring access to early and periodic screening, diagnosis, and treatment (EPSDT) services and (ii) EPSDT services will be provided to individuals younger than 21 years of age who are covered under the State Plan under § 1902(a)(1)(A) of the Social Security Act.

2. The Commonwealth assures that it meets the minimum requirements for prescription drug coverage in § 1937 of the Social Security Act and implementing regulations at 42 CFR 440.347. Coverage is at least the greater of one drug in each United States Pharmacopeia (USP) category and class or the same number of prescription drugs in each category and class as the base benchmark plan.

3. The Commonwealth assures that beneficiaries may request and gain access to clinically appropriate prescription drugs when not covered.

4. The Commonwealth assures that when it pays for outpatient prescription drugs covered under an alternative benefit plan, the drug meets the requirements of § 1927 of the Social Security Act and implementing regulations at 42 CFR 440.345, except for those requirements that are directly contrary to amount, duration, and scope of coverage permitted under § 1937 of the Social Security Act.

5. The Commonwealth assures that when conducting prior authorization of prescription drugs under an alternative benefit plan, the prescription complies with prior authorization program requirements in § 1927(d)(5) of the Social Security Act.

6. The Commonwealth assures that (i) substituted benefits are actuarially equivalent to the benefits they replaced from the base benchmark plan, and (ii) the Commonwealth has an actuarial certification for substituted benefits available for Centers for Medicare and Medicaid Services (CMS) inspection if requested by CMS.

7. The Commonwealth assures that individuals will have access to services in rural health clinics (RHC) and federally qualified health centers (FQHC) as defined in § 1905(a)(2)(B) and (C) of the Social Security Act.

8. The Commonwealth assures that payment for RHC and FQHC services is made in accordance with the requirements of § 1902(bb) of the Social Security Act.

9. The Commonwealth assures that it will comply with the requirement of § 1937(b)(5) of the Social Security Act by providing at least essential health benefits as described in § 1302(b) of the Patient Protection and Affordable Care Act (42 USC § 18001) to all alternative benefit plan participants.

10. The Commonwealth assures that it will comply with the mental health and substance use disorder parity requirements of § 1937(b)(6) of the Social Security Act by ensuring that the financial requirements and treatment limitations applicable to mental health or substance use disorder benefits comply with the requirements of § 2705(a) of the Public Health Service Act (42 USC § 201 et seq.) in the same manner as such requirements apply to a group health plan.

11. The Commonwealth assures that it will comply with § 1937(b)(7) of the Social Security Act by ensuring that benefits provided to alternative benefit plan participants include, for any individual described in § 1905(a)(4)(C) of the Social Security Act, medical assistance for family planning services and supplies in accordance with such section.

12. The Commonwealth assures emergency and nonemergency transportation for individuals enrolled in an alternative benefit plan in accordance with 42 CFR 431.53.

13. The Commonwealth assures, in accordance with 45 CFR 156.115(a)(4) and 45 CFR 147.130, that it will provide as essential health benefits a broad range of preventive services including "A" and "B" services recommended by the U.S. Preventive Services Task Force; Advisory Committee on Immunization Practices recommended vaccines; preventive care and screening for infants, children, and adults recommended by the Health Resources and Services Administration Bright Futures Program; and additional preventive services for women recommended by the Institute of Medicine.

E. The Commonwealth will use both managed care and fee-for-service delivery systems for the alternative benefit plan.

1. The Commonwealth certifies that it will comply with all applicable Medicaid laws and regulations, including §§ 1903(m), 1905(t), and 1932 of the Social Security Act and 42 CFR Part 438, in providing managed care services through the alternative benefit plan. This certification includes the requirement for CMS approval of contracts and rates pursuant to 42 CFR 438.6.

2. The managed care delivery system is the same as the CMS-approved § 1915(b) managed care waivers. The fee-for-service delivery system is the traditional, state-managed system.

3. The Commonwealth assures that, for each benefit provided under an alternative benefit plan that is not provided through managed care, the Commonwealth will use the payment methodology in its approved state plan.

F. Individuals who have cost-effective group health plans described in § 1906 of the Social Security Act or qualified employer-sponsored plans described in § 1906A of the Social Security Act may request to receive coverage through the Health Insurance Premium Payment program.

G. Any cost sharing described in Attachment 4.18-A of the State Plan (12VAC30-20-150) applies to the alternative benefit plan.

H. The Commonwealth makes the following general assurances:

1. The Commonwealth assures that the alternative benefit plan coverage is provided in accordance with federal upper payment limit requirements and other economy and efficiency principles that would otherwise be applicable to the services or delivery system through which the coverage and benefits are obtained.

2. The Commonwealth will continue to comply with all other provisions of the Social Security Act in the administration of the State Plan.

3. The Commonwealth assures that alternative benefit plan benefit designs shall conform to the nondiscrimination requirements at 42 CFR 430.2 and 42 CFR 440.347(e).

4. The Commonwealth assures that all providers of alternative benefit plan benefits shall meet the provider qualification requirements of the base benchmark plan or the Medicaid state plan.