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Final Regulation
Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-60-5; 12 VAC 30-141-570
Regulation title(s)	Applicability of Utilization Review Requirements; Utilization Control
Action title	Utilization Review Changes
Date this document prepared	March 14, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

DMAS is implementing regulatory changes to standardize the fee-for-service utilization review process for all provider types, including what letters are sent to providers, what documentation may be submitted and when it may be submitted, and what deadlines apply.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DMAS = Department of Medical Assistance Services

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 Regulatory Review Summary entitled "Utilization Review Changes" (12 VAC 30-60-5, 12 VAC 30-141-570)" 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, of the Administrative Process Act.

March 14, 2018
Date

/signature/
Jennifer S. Lee, M.D., Director
Dept. of Medical Assistance Services

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes from previously reported information. Please see the legal basis section.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this action is to implement regulatory changes to more clearly reflect DMAS utilization review procedures. This action will not affect the health, safety, or welfare of Medicaid individuals or citizens of the Commonwealth.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Currently, DMAS regulations do not establish the steps that are involved in a fee-for-service utilization review. Specifically, the regulations do not include how a utilization review is initiated, what letters or communications are sent, and what the deadlines for document submission are.

DMAS is promulgating these regulations to provide greater clarity to providers, Medicaid members, and members of the public about this process. The proposed changes reflect current DMAS process; they do not include changes in the utilization review process.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The advantages to these changes are that they will provide more information and clarity to Medicaid and FAMIS providers, members, and the general public about the fee-for-service utilization review process. There are no disadvantages to the public, businesses, or the Commonwealth related to these proposed changes.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the previously-reported information: there are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the previously-reported information: no localities will be particularly affected by the proposed regulation, as the changes will apply statewide.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

No comments were received during the public comment period.

Detail of Changes Made Since the Previous Stage

*Please list all changes that made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
12 VAC 30-60-5 A 1	All provider documentation shall be written, signed, and dated at the time the services are rendered.	All provider documentation shall be written, signed, and dated.	There are different timing requirements for signatures, and DMAS is taking those up in a separate regulatory package.
12 VAC 30-60-5 B	The regulations did not clarify that the procedures in paragraph B relate to utilization reviews only for services offered through fee-for-service.	Language is added to clarify that the procedures in paragraph B apply only to fee-for-service.	MCOs do not follow the procedures in paragraph B.
12 VAC 30-60-5 B 1 b	A utilization review may be initiated when DMAS or its designee requests onsite access to records.	The word “onsite” has been removed.	This change clarifies that the request for records does not need to occur onsite.
12 VAC 30-60-5 B 1 c	A utilization review may be initiated when a	This option has been removed.	The change is needed because this item is confusing, and the

	preliminary findings letter is issued.		options are appropriately listed in the other items (a, b, and d). The remaining items are re-lettered.
12 VAC 30-60-5 B 4	Virginia Code sections and regulatory sections are referenced.	The Code and regulatory references are removed.	This simplifies and clarifies the sentence, and doesn't include Code or regulatory citations that may change in the future.
12 VAC 30-60-5 D 1	The acronym BHSA appeared in the text.	The acronym has been removed and the term has been spelled out.	The term was spelled out for the sake of clarity.