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Fast-Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services	
Virginia Administrative Code (VAC) citation(s)	· · · · · · · · · · · · · · · · · · ·	
Regulation title(s)	Skilled Nursing Facility Services, EPSDT, School Health Services and Family Planning. Community Mental Health Services	
Action title	Peer Support Services and Family Support Partners	
Date this document prepared	4/12/2017	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This regulatory action responds to a legislative mandate to implement peer support services to children and adults who have mental health conditions and/or substance use disorders. Peer support services are an evidence-based mental health model of care which consists of a qualified peer support provider who assists individuals with their recovery from mental illness and substance use disorders. The experiences of peer support providers, as consumers of mental health and substance use services, can be an important component in the delivery of a comprehensive mental health and substance use service delivery system. Peer Support Services

shall target individuals 21 years or older with mental health or substance use disorder or cooccurring mental health and substance use disorders. A Peer Support service called Family Support Partners shall be provided to individuals under the age of 21 who have a mental health or substance use disorder or co-occurring mental health and substance use disorders which are the focus of the support with their families or caregivers.

Peer support providers are self-identified consumers who are in successful and ongoing recovery from mental illness and/or substance use disorders. Peer support providers shall be sufficiently trained and certified to deliver services. Supervision and care coordination are core components of peer support 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 Peer Support Services with the attached amended regulations (12 VAC 30-50-130, 12 VAC 30-50-226, and 12 VAC 30-130-5230 et seq.) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

4/12/2017 Date /signature/ Cynthia B. Jones, Director Dept. of Medical Assistance Services

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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.

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.

This regulatory package is also authorized by the 2016 Acts of Assembly, Chapter 780, Item 306.MMMM(1), which states that DMAS "... shall amend the state plan for medical assistance and/or seek federal authority through an 1115 demonstration waiver, as soon as feasible, to

provide coverage of ... peer support services to Medicaid individuals in the Fee-for-Service and Managed Care Delivery Systems."

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Item 306.MMM(3) states that DMAS "... shall amend the State Plan for Medical Assistance and any waivers thereof to include peer support services to children and adults with mental health conditions and/or substance use disorders. The department shall work with its contractors, the Department of Behavioral Health and Developmental Services, and appropriate stakeholders to develop service definitions, utilization review criteria and provider qualifications."

DMAS shall amend the state plan for medical assistance and seek federal authority for the addition of Peer Support Services to Medicaid's delivery systems of comprehensive Behavioral Health and Addiction and Recovery and Treatment Services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. **Describe 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.

The Commonwealth is currently experiencing a crisis of substance use of overwhelming proportions. More Virginians died from drug overdose in 2013 than from automobile accidents. In 2014, 80% of the people who died from drug overdoses (986 people) died from prescription opioid or heroin overdoses. Virginia's 1.1 million Medicaid/FAMIS members are affected disproportionately by this substance use epidemic as demonstrated by DMAS' claims history data showing 216,555 Medicaid members with a substance use diagnosis in state fiscal year 2015. Peer supports are part of a continuum of recovery services offered by DMAS, and as such, this regulatory action has a direct, specific impact on the health, safety, and welfare of the Commonwealth's Medicaid individuals.

This action adds the necessary component of person-centered and recovery focused Peer Support Services to the comprehensive program of Addiction and Recovery and Treatment Services to include community-based addiction and recovery treatment services established in response to the Governor's bipartisan Task Force on Prescription Drug and Heroin Addiction's numerous recommendations.

The provision of Peer Support Services facilitates recovery from both serious mental illnesses and substance use disorders. Recovery is a process in which people are able to live, work, learn and fully participate in their communities. For some individuals, recovery is the ability to live a fulfilling and productive life despite their disability. For others, recovery could mean the reduction or complete remission of symptoms. Peer Support Services are delivered by peers who have been successful in the recovery process and can extend the reach of treatment beyond the clinical setting into an individual's community and natural environment to support and assist an individual with staying engaged in the recovery process.

Rationale for using fast-track process

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Please **explain the rationale for using the fast-track process** in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This regulatory action is being promulgated as a fast track action because public comments received about the general concept and features which have been specified to date have been positive. The peer supports proposal offers an opportunity for substantial improvement in mental health and substance use treatment, and affected entities are actively participating with DMAS in its design efforts.

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.

The section of the State Plan for Medical Assistance that is affected by this action is: "Amount, Duration, and Scope of Medical and Remedial Services."

CURRENT POLICY

DMAS covers approximately 1.1 million individuals: 80% of members receive care through contracted managed care organizations (MCOs) and 20% of members receive care through feefor-service (FFS). The majority of members enrolled in Virginia's Medicaid and FAMIS programs include children, pregnant women, and individuals who meet the disability category of being aged, blind, or disabled. The 20% of the individuals receiving care through fee for service do so because they meet one of 16 categories of exception to MCO participation, for example: (i) inpatients in state mental hospitals, long-stay hospitals, nursing facilities, or ICF/IIDs; (ii) individuals on spend down; (iii) individuals younger than 21 years of age who are in residential treatment facility Level C programs; (iv) newly eligible individuals in their third trimester of pregnancy; (v) individuals who permanently live outside their area of residence; (vi) individuals receiving hospice services; (vii) individuals with other comprehensive group or individual health insurance; (viii) individuals eligible for Individuals with Disabilities Education Act (IDEA) Part C services; (ix) individuals whose eligibility period is less than 3 months or is retroactive, and; (x) individuals enrolled in the Virginia Birth-Related Neurological Injury Compensation Program.

Historically, Virginia has not funded Peer Support Services but the Commonwealth now has compelling reasons to provide Medicaid coverage for the provision of Peer Support Services to adults and to the caregivers of youth. In a letter to State Medicaid Directors, dated August 15, 2007, the Centers for Medicare & Medicaid Services (CMS) stated that they recognize "... the mental health field has seen a big shift in the paradigm of care over the last few years." CMS further states that "...now, more than ever, there is great emphasis on recovery from even the most serious mental illnesses when persons have access in their communities to treatment and supports that are tailored to their needs. CMS recognizes that the experiences of peer support

providers, as consumers of mental health and substance use services, can be an important component in a State's delivery of effective treatment. CMS is reaffirming its commitment to State flexibility, increased innovation, consumer choice, self-direction, recovery, and consumer protection through approval of these services."

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Beyond health care risk, the economic costs associated with mental illness and substance use disorders are significant. States and the federal government spend billions of tax dollars every year on the collateral impact associated with substance use disorders and mental illness, including criminal justice, public assistance and lost productivity costs.

RECOMMENDATIONS

To address the emphasis on recovery from mental illnesses and substance use disorders and the recommendations from CMS, individuals 21 years or older and families or caretakers of youth 21 and under who participate in Medicaid managed care plan, GAP, FAMIS, FAMIS MOMS, or Medicaid fee for service shall be eligible to receive Peer Support Services. These services shall be an added service under the Virginia's Community Mental Health and Rehabilitative Services for individuals with mental health disorders and under the Addiction and Recovery Treatment Services (ARTS) for individuals with substance use disorders and co-occurring substance use and mental health disorders.

To be eligible to receive Peer Support Services, adults 21 years and older shall require recovery oriented assistance and support for the acquisition of skills needed to engage in and maintain recovery, the development of self-advocacy skills to achieve a higher level of community tenure while decreasing dependency on formalized treatment systems, and to increase responsibilities, wellness potential, and shared accountability for their own recovery. Individuals 21 years or older shall have a documented substance use disorder or co-occurring mental health and substance use disorder, shall demonstrate moderate to severe functional impairment as a result of the diagnosis, and the functional impairment shall be of a degree that it interferes with or limits performance educationally, socially, vocationally, or living more independently.

Families or caretakers of individuals under age 21 shall qualify for Family Support ("Family Support Partners") to assist with the individual's substance use disorder or co-occurring mental health and substance use disorder that has occurred within the past year. The family or caretaker and the individual shall require recovery assistance and two or more of the following:

- 1. peer-based recovery oriented support for the maintenance of wellness and acquisition of skills needed to support the youth;
- 2. assistance to develop self-advocacy skills to assist the youth in achieving self-management of the youth's health status;
- 3. assistance and support to prepare the youth for a successful work/school experience; or
- 4. peer modeling to increase helping the youth to assume responsibility for their recovery and resiliency.

Covered Peer Support Services include collaborative recovery oriented and person centered activities and experiences, health care advocacy, the development of community roles and natural supports, support of work or other meaningful activity of the person's choosing, crisis support, and effective utilization of the service delivery system.

Peer Support Services shall be rendered following a documented recommendation for service by a licensed practitioner who is a Credentialed Addiction Treatment Professional or a Licensed Mental Health Professional who is enrolled as mental health or substance use Medicaid provider or who is working in an agency or facility enrolled as a mental health or substance use provider. The qualified peer will perform peer services under the supervision and clinical direction of the practitioner making the recommendation for services. The peer will be employed by or have a contractual relationship with the licensed and enrolled practitioner or provider agency. These enrolled providers shall only hire peers who have been properly trained and certified by the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and then registered with the Board of Counseling at the Department of Health Professions (DHP). Only the licensed and enrolled Credentialed Addiction Treatment Professional, Licensed Mental Health Professional, or provider agency shall be eligible to bill and receive reimbursement for Peer Support Services.

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A Recovery, Resiliency, and Wellness Plan based on the individual's, and as applicable the identified family's perceived recovery needs and multidisciplinary assessment shall be required within 30 calendar days of the initiation of service. Development of the Recovery, Resiliency, and Wellness Plan shall include collaboration with the individual and, as applicable, the identified family member or caregiver involved in the individual's recovery. Ongoing and routine review of this plan will ensure effective service delivery.

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 identified in adding Peer Support Services to the full continuum of Addiction and Recovery Treatment Services and Community Mental Health Rehabilitative Services in Virginia. Peer Support Services are needed to ensure the success of Virginia's delivery system transformation that will save lives, improve patient outcomes, and decrease costs. There are no disadvantages to affected providers as this is an added service.

The advantages to Medicaid-eligible individuals are discussed above.

CMS will require an independent evaluation of the peer support services to demonstrate any improved outcomes for Medicaid members and cost savings from reducing Emergency Department visits and inpatient hospital utilization. This evaluation will help the Commonwealth demonstrate the impact of the service on the lives of its citizens, both Medicaid eligible and non-eligible, as well as on the Commonwealth's economy.

Requirements more restrictive than federal

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Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements more restrictive than federal contained in these recommendations.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There will be no localities that are more affected than others as these requirements will apply statewide.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and

	GF	NGF	Total
SFY 2017	\$551,444	\$551,444	\$1,102,888
SFY 2018	\$2,898,654	\$2,898,654	\$5,797,308

b) a delineation of one-time	
versus on-going expenditures	
Projected cost of the new	There are no costs to localities as a result of these regulatory
regulations or changes to	changes.
existing regulations on	
localities.	
Description of the individuals,	Medicaid members with diagnoses of mental illness, substance use
businesses, or other entities	disorders, or co-occurring mental illness and substance use
likely to be affected by the new	disorders are likely to benefit from these new regulations.
regulations or changes to	,
existing regulations.	Medicaid providers who are practitioners and agency providers of
	behavioral health and/or substance use disorder treatment services
	are likely to be affected by the new regulations.
	are likely to be directed by the new regulations.
Agency's best estimate of the	Record on current membership and data from the Covernor's Action
number of such entities that	Based on current membership and data from the Governor's Action
will be affected. Please include	Plan program for those with serious mental illness, DMAS estimates approximately 4,600 current Medicaid members would benefit from
	''
an estimate of the number of	peer supports. Community Service Boards currently have a network
small businesses affected.	that could provide these services to approximately 10% of these.
Small business means a	With Medicaid reimbursement, DMAS assumes over the first 18
business entity, including its	months of the program, peer supports could be provided to half of
affiliates, that:	those in need. Based on this network growth and the proposed rates
a) is independently owned and	DMAS estimates expenditures of \$1.1 million (0.6 GF) in FY 2017
operated and;	and \$5.8 million (\$2.9 GF) in FY 2018.
b) employs fewer than 500 full-	
time employees or has gross	Currently there are approximately 5,891 provider entities with a
annual sales of less than \$6	unique National Provider Identifier (NPI) that could be affected by the
million.	new regulations if they choose to participate in the service. At least
	half if not more of these providers are small businesses.
All projected costs of the new	Providers will be required to maintain the standard medical record
regulations or changes to	documentation in order to support their claims that are submitted for
existing regulations for	reimbursement.
affected individuals,	
businesses, or other	No additional reporting requirements, recordkeeping or administrative
entities. Please be specific and	costs will be required for these regulatory changes.
include all costs including:	
a) the projected reporting,	
recordkeeping, and other	
administrative costs required	
for compliance by small	
businesses; and	
b) specify any costs related to	
the development of real estate	
for commercial or residential	
purposes that are a	
consequence of the proposed	
regulatory changes or new	
regulations.	
Beneficial impact the	These regulations are designed to assist Medicaid-covered
	individuals with mental health and/or substance use disorders, in
regulation is designed	· · · · · · · · · · · · · · · · · · ·
to produce.	order to help them recover from those disorders.

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Alternatives

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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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No other alternatives would meet the requirements of the legislative mandate.

CMS recognizes that the experiences of peer support providers, as consumers of mental health and substance use services, can be an important component in a State's delivery of effective treatment. Stakeholders and the Governor's Taskforce on Prescription Drug and Heroin Abuse have documented the need for increased reimbursement rates for treatment services to address the prescription opiate and heroin epidemic in the Commonwealth. Opioid overdoses have become the most prevalent type of accidental death in the Commonwealth over the past five years. From 2007 to 2013, nearly 70% of all deaths from drugs/poisons were attributed to opioids. Since 2000, deaths from prescription opioid overdoses have more than doubled. In 2015, 809 Virginians died from prescription opioid and heroin overdoses. Over the past two years, deaths from heroin overdoses have doubled. Increasing access to addiction treatment through the ARTS benefit and waiver is essential to reverse this epidemic. This action adds the necessary component of person-centered and recovery focused Peer Support Services to the comprehensive program of behavioral health services to include community-based addiction and recovery treatment services established in response to the Governor's bipartisan Task Force on Prescription Drug and Heroin Addiction's numerous recommendations.

The addition of Peer Support Services to existing comprehensive behavioral health and substance use treatment services will facilitate recovery from even the most serious mental illnesses and substance use disorders. Extending beyond the traditional clinical setting to include the person centered assistance and support by peers who have been successful in the recovery process will save lives, improve patient outcomes, and promote an individual's ability to live a fulfilling and productive life.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Public comment has been positive and helped DMAS to identify key areas for substance use disorder treatment reform to include the addition of peer support services beginning in September 2015 until June 2016, using multiple modalities that included the Commonwealth's administrative record, the Virginia Regulatory Town Hall and a variety of electronic and face to face methods all of which were supported by electronic communications provided to interested

stakeholders. DMAS held two public hearings on January 5, 2016 in the Richmond area and on January 7, 2016 in the far southwest region in Abingdon, Virginia.

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In addition to the web based communication and public hearings, a comprehensive workgroup convened to develop the benefit program structure to include the inclusion of peer support services in collaboration with diverse stakeholders. The SUD/ARTS Workgroup (participant list attached) consisted of managed care organizations, the DMAS Behavioral Health Service Administrator, public and private behavioral health providers, health systems, provider associations, member advocacy organizations, peer support representatives, community service boards, hospital associations, Federally Qualified Health Centers, physician and psychiatric societies as well as staff from the Department of Behavioral Health and Developmental Services (DBHDS), the Virginia Department of Health Professions (DHP), the Virginia Department of Health (VDH) and DMAS. All workgroup activity has been summarized and posted to the DMAS website for review by stakeholders and interested individuals. Information on the workgroup and program design can be found on the DMAS website at: http://www.dmas.virginia.gov/Content Pgs/bh-sud.aspx.

DMAS posted the draft concept paper on its website and provided notice through the Virginia Regulatory Town Hall on July 1, 2016: http://townhall.virginia.gov/L/ViewNotice.cfm?gnid=566.

DMAS posted another public notice online through the Commonwealth's administrative record, the Virginia Regulatory Town Hall on July 1, 2016 as well as posted the notice on the DMAS website and distributed through the electronic distribution list. This notice further sought public comments for a 30 day period on the ARTS Waiver "Concept Paper" which incorporated feedback from the earlier public hearings. The ARTS Waiver "Concept Paper" was the draft application to amend the 1115 GAP Waiver. DMAS requested public comments on the entire Addiction and Recovery Treatment Services benefit delivery system design.

All feedback was considered and incorporated as appropriate in the 1115 Waiver amendment which was submitted to the Centers for Medicare and Medicaid Services (CMS) on August 5, 2016.

A summary of public comment and DMAS actions related to those comments is posted online at http://www.dmas.virginia.gov/Content_Pgs/bh-sud.aspx.

Interagency meetings were held in October 2016 and November 2016 with staff from the Department of Behavioral Health and Developmental Services (DBHDS), the Virginia Department of Health Professions (DHP), and DMAS to establish the process by which peers will be certified by DBHDS and registered with DHP. Collaboration continued amongst these agencies during the development of the program requirements necessary for Medicaid reimbursement.

DMAS submitted an 1115 Demonstration waiver application to CMS to add an enhanced and comprehensive benefit package to cover addiction and recovery treatment services, and that application was approved on December 15, 2016.

Family Impact

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Please assess the 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; nor 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30- 50-130		Mental health peer support services do not exist in current regulations.	Establishes requirements for mental health peer support services for individuals under the age of 21.
12 VAC 30- 50-226		Mental health peer support services do not exist in current regulations.	Establishes requirements for mental health peer support services for individuals age 21 and older.
12 VAC 30- 80-30			Reimbursement provisions added for mental health peer support services.
12 VAC 30- 80-32			Reimbursement provisions added for ARTS peer support services.
	12 VAC 30- 130-5160		Establishes definitions for ARTS peer support services.

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12 VAC 30- 50-5170	Establishes service definitions and descriptions for ARTS peer support services.
12 VAC 30- 5180	Establishes ARTS peer support eligibility criteria.
12 VAC 30- 5190	Establishes provider and setting requirements for ARTS peer support services.
12 VAC 30- 5200	Establishes documentation requirements for ARTS peer support services.
12 VAC 30- 5210	Establishes service limitations for ARTS peer support services.

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