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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-50-130; 12 VAC 30-50-226; 12 VAC 30-60-61; 12 VAC 30-60-140; 12 VAC 30-60-143
Regulation title(s)	Nursing facility services, EPSDT, including school health services and family planning; Community Mental Health Services; Services Related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); Community Mental Health Services for Children; Community Mental Health Services; Mental Health Services Utilization Criteria; Definitions.
Action title	CMHRS Changes Required by CMS
Date this document prepared	

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.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

DMAS must implement regulatory changes in order to comply with CMS requirements related to service definitions, service components, and staffing requirements for community mental health rehabilitative services. CMS also required DMAS to provide detail on the unit of service and date that reimbursement rates were set; these are not changes in DMAS rates or units, but instead, include existing DMAS rates and units in the regulations.

DMAS last updated these regulations on January 30, 2015. During the following two years, CMS reviewed those regulatory changes and required that DMAS clarify that community mental health rehabilitative services fit under the umbrella of "rehabilitative services" under 42 CFR 440.130(d): services that are recommended by a physician or licensed practitioner for maximum reduction of physical or mental disability and restoration of a beneficiary to his best possible functional level. More specifically, CMS required DMAS to more clearly define each service, list and define the subcomponents of each service, specify what type of professional could provide each subcomponent, specify what a unit of service is for each service, and the date that existing reimbursement rates were set. CMS issued its approval of the final revisions to these changes in the state plan on May 26, 2017. These changes must now be replicated in the Virginia Administrative Code.

In addition, Virginia is considering other changes to help ensure that Virginia offers a range of services that are person-centered and meet the needs of Medicaid members, and that services utilize evidence-based practices and principles including those that are outcome-oriented, trauma-informed, recovery-oriented, and based upon clear medical necessity criteria.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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'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.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is essential to protect the health, safety, and welfare of citizens by ensuring that individuals receive carefully defined and medically necessary services, and that each service component is provided by appropriately trained, qualified, and credentialed staff.

This regulatory action ensures that DMAS will be providing the services according to CMS requirements, and that therefore, CMS will continue to provide federal financial participation for these rehabilitative services under 42 CFR 440.130(d): services that provide maximum

reduction of physical or mental disability and restoration of a beneficiary to his best possible functional level.

In addition, this regulatory action seeks to incorporate changes to help ensure that Virginia offers a range of person-centered and outcome-based services that meet the needs of Medicaid members, and that these services utilize evidence-based practices and principles including those that are trauma-informed, recovery-oriented, and based upon clear medical necessity criteria.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

CMS reviewed regulatory changes that went into effect on January 30, 2015, and required that DMAS more clearly list and define the subcomponents of each community mental health rehabilitative service, to specify what type of professional could provide each subcomponent, and to specify current units of service and dates that existing reimbursement rates were set.

In addition, this regulatory action seeks to incorporate changes to help ensure that Virginia offers a range of person-centered services that meet the needs of Medicaid members, and that services utilize evidence-based practices and principles including those that are outcome-oriented, trauma-informed, recovery-oriented, and based upon clear medical necessity criteria.

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. 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 alternatives will meet the CMS requirements.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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 hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the changes discussed in this background document, and 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and 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 Emily McClellan, DMAS, 600 E. Broad Street, Richmond, VA 23219, by phone: 804-371-4300, by email: Emily.McClellan@dmas.virginia.gov, or by fax: 804-786-1680. 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.