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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Dept. of Medical Assistance Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12 VAC 30-60-5; 12 VAC 30-60-140
<b>VAC Chapter title(s)</b>	Applicability of utilization review requirements; Community mental health services
<b>Action title</b>	Service Authorization
<b>Date this document prepared</b>	10/26/2018

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.*

This regulatory action clarifies the documentation requirements for service authorization, including service authorization for Community Mental Health and Rehabilitative Services (CMHS).

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

BHSA = Behavioral Health Services Administrator  
CMHS = Community Mental Health and Rehabilitative Services  
DMAS = Department of Medical Assistance Services

### **Mandate and Impetus (Necessity for Emergency)**

*Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:*

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

*As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change*

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).

This regulatory action is being promulgated as an emergency based on the 2018 Acts of Assembly, Chapter 2, Item 303.X1, and 2019 Acts of Assembly, Chapter 854, Item 303.X1, which states: "The Department of Medical Assistance Services shall make programmatic changes in the provision of ... Community Mental Health services in order to ensure appropriate utilization and cost efficiency. The department shall consider all available options including ... utilization review... The Department of Medical Assistance Services shall promulgate regulations to implement these changes within 280 days or less from the enactment date of this Act.

The Governor is hereby requested to approve this agency's adoption of this emergency regulation to authorize the initiation of the promulgation process provided for in § 2.2-4007.01.

### **Legal Basis**

*Identify (1) the promulgating agency, 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 and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

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**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

This regulation is essential to protect the health, safety, or welfare of citizens in that it ensures that Medicaid members receive appropriate behavioral health services based on their documented needs. This action meets the budget mandate because it ensures proper utilization and cost efficiency.

**Substance**

*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.*

<b>Current section number</b>	<b>New section number, if applicable</b>	<b>Current requirement</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
12 VAC 30-60-5-A			An introductory paragraph was added to clarify the utilization control measures used by DMAS.
12 VAC 30-60-5 B			Definition of “service authorization” added to text.
12 VAC 30-60-5 B1			Clarifies that in order to obtain service authorization, information shall be provided to support that the service is medically necessary.
12 VAC 30-60-5 B2			The sentence was re-written for clarity and to link the requirement back to the “service authorization” heading.
12 VAC 30-60-5 B3			Text added related to requests for continued service authorization.
12 VAC 30-60-5 C			This paragraph is no longer needed due to the new introductory paragraph in A.

12 VAC 30-60-5 D			Paragraph re-lettered as “C.” DMAS contractors are added to reflect current practice. DMAS laws, regulations, and provider agreement requirements added as compliance components.
12 VAC 30-60-5 E			Paragraph re-lettered as “D.” DMAS laws, regulations, and provider agreement requirements added as compliance components.
12 VAC 30-60-5 F		Section F relates to community mental health services, and does not belong in this section, which relates to utilization review for all services. This content was moved to 12VAC30-60-140.	The content of paragraph F3 – provisional licenses – was moved to 140 D 5. The content of paragraph F3 -- provider enrollment contract – was moved to 140 D 6. The content of paragraph F4 was moved to 140 B1. The content of paragraph F5 was removed to avoid duplication with DHP regulations that have requirements for how a resident or supervisee should sign their names.
12 VAC 30-60- 140 A			An introductory paragraph was added to clarify the utilization control measures used by DMAS for community mental health services.
12 VAC 30-60- 140 B			Requirements for initial and continuing service authorization requests are clarified.
12 VAC 30-60- 140 C and D			Paragraphs re-lettered.
12 VAC 30-60- 140 D 5 and D 6			Licensure and enrollment rules that were in 12VAC30-60-5 were moved here.

**Issues**

*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 primary advantage of this regulation is that it ensures that Medicaid members receive appropriate health care services based upon their documented needs. There are no disadvantages to the Agency, the public, or the Commonwealth.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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In order to help ensure appropriate utilization and cost efficiency, DMAS works closely with its partners at the Department of Behavioral Health and Developmental Services and its partners at the Department of Health Professions to ensure that regulations and guidance documents from each of the agencies help ensure that high quality, medically necessary services are provided across the Commonwealth.

As part of this effort, and in order to ensure that existing DMAS regulations reflect current practice and are clear to sister agencies, Medicaid members, Medicaid providers, and members of the public, DMAS determined that it was necessary to update its regulations.

### **Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency.*

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This ER/NOIRA is not being used to announce a periodic review or a small business impact review.

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Emily McClellan, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-371-4300, or [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov). In order to be considered, comments must be received by 11:59 pm 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.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

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Please see the “Substance” section.