



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Assistant Attorney General

DATE: April 27, 2021

SUBJECT: Fast-Track Regulations (5478 / 8890)
Change from Service-Specific Provider Intake to Comprehensive Needs Assessment

I have reviewed the amendments intended to update the regulations to reflect the existing assessment process for certain community mental health services. The agency background document explains that the change from using a separate service-specific provider intake (SSPI) process for each community mental health service to using a comprehensive needs assessment (CNA) was announced by DMAS in a Medicaid Memo, and the changes took effect on January 1, 2019. It is my understanding that the amendments reflected in the regulations have been approved by the Centers for Medicare and Medicaid Services in a State Plan Amendment.

Based on my review, it is my view that the agency Director, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 32.1-325, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act, and has not exceeded that authority.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate these regulations, not the appropriateness of whether they should be promulgated pursuant to the Fast-Track process. Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the Fast-Track process is received within the 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 Department of Medical Assistance Services shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the Fast-Track regulations serving as the Notice of Intended Regulatory Action.

If you have any questions or need any additional information, please feel free to contact me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General/Section Chief