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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Assistant Attorney General

DATE: May 26, 2021

SUBJECT: Fast-Track Regulations (5163 / 8744)
Medicaid Expansion: Alternative Benefit Plan

I have reviewed the attached Fast-Track regulations that would make changes necessary for the implementation of Medicaid expansion. Specifically, this regulatory action complies with a federal requirement to create an alternative benefit plan for individuals covered in the Medicaid expansion population. The regulations are part of the overall implementation process for Medicaid expansion in accordance with ongoing directives in the 2018 *Acts of Assembly*, Chapter 2, Item 303.SS.4(a)(1), the 2019 *Acts of Assembly*, Chapter 854, Item 303.SS.4(a)(1), the 2020 *Acts of Assembly*, Chapter 1289, Item 313.QQ.3(a)(1), and the 2021 Special Session 1 *Acts of Assembly*, Item 313.QQ.3(a)(1), to “amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any waivers thereof, to implement coverage for newly eligible individuals pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act.” 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, 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 set out in this article 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

Action: Expansion-Related Changes - Alternative Benefit Plan
Stage: Fast-Track

5/26/21 12:21 PM [latest]

12VAC30-50-610 Alternative benefit plan: Medicaid expansion
Part X

Alternative Benefit Plan

A. The Commonwealth provides alternative benefits to the adult group (defined in § 1902(a)(10)(A)(i)(VIII) of the Social Security Act) under the coverage option under § 1937 of the Social Security Act (42 USC § 301 et seq.) approved by the Secretary of Health and Human Services. Enrollment is mandatory for individuals in the adult group, and the alternative benefit package shall be available statewide.

B. In developing the benefit package for the alternative benefit plan, the Commonwealth reviewed:

1. Benefits in its approved State Plan as a "benchmark benefit package";
2. The largest plan by enrollment of the three largest small-group insurance products in the small-group market as the "base benchmark plan"; and
3. Essential health benefits.

C. Alternative benefit plan services.

1. The alternative benefit plan includes all Medicaid State Plan services, including essential health benefits.
2. The essential health benefits included in the alternative benefit plan are ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management. Pediatric services, including oral and vision care, are essential health benefits that are not covered for adults.

D. The Commonwealth will use both managed care and fee-for-service delivery systems for the alternative benefit plan.

1. The managed care delivery system is the same as the CMS-approved § 1915(b) managed care waivers. The fee-for-service delivery system is the traditional, state-managed system.
2. For each benefit provided under an alternative benefit plan that is not provided through managed care, the Commonwealth will use the payment methodology in its approved state plan (12 VAC 30-70, 12 VAC 30-80, and 12 VAC 30-90).

E. Individuals who have cost-effective group health plans described in § 1906 of the Social Security Act or qualified employer-sponsored plans described in § 1906A of the Social Security Act may request to receive coverage through the Health Insurance Premium Payment program.

F. Any cost sharing described in Attachment 4.18-A of the State Plan (12VAC30-20-150) applies to the alternative benefit plan.

