



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-60
<b>Regulation title</b>	Standards Established and Methods Used to Assure High Quality Care
<b>Action title</b>	Utilization Review of Community Mental Health Services
<b>Date this document prepared</b>	June 19, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The section of the Virginia Administrative Code that is affected by this action is utilization review of Community Mental Health Services (12VAC30-60-140).

Currently, the regulations indicate that the Department of Mental Health, Mental Retardation, and Substance Abuse Services conducts on-site utilization reviews of providers that render community mental health services. These providers are community-based behavioral health services providers.

This action replaces *DMAS* or its *contractor* for *Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)* in 12 VAC 30-60-140 to reflect that DMAS conducts utilization reviews. The word “on-site” was removed to reflect that DMAS conducts utilization reviews not only on-site but also by conducting desk reviews of provider documentation.

**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 Agency Background Document with the attached amended regulations entitled Utilization Review of Community Mental Health Services (12 VAC 30-60-140) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cynthia B. Jones, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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 and 325, 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.

The *Code of Virginia* § 2.2-4012.1 and Executive Order 14 (2010) permit DMAS to promulgate these regulatory changes as a fast track action because these changes are expected to be non-controversial and the areas of agency discretion are minor.

**Purpose**

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

This regulatory change is not expected to affect the health, safety, or welfare of citizens of the Commonwealth nor of Medicaid recipients. It is intended to assist the agency with provider appeals by updating and clarifying current policies.

The Commonwealth is required, pursuant to 42 CFR § 440.260, to provide, in its State Plan for Medical Assistance, for its ‘methods and standards used to assure that services are of high quality’.

The purpose of this action is to update these affected VAC sections consistent with current practice and procedures. DMAS is losing provider appeals because it has been performing these utilization reviews of rendered services, instead of the Department of Mental Health, Mental Retardation and Substance Abuse Services (now the Department of Behavioral Health and Developmental Services), as stated in these attached regulations. The current language has been outdated for quite some time due to changes in the agency’s interagency agreement with this sister state agency.

**Rationale for using fast track process**

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

*Please note: 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 (i) file notice of the objections 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 regulation serving as the Notice of Intended Regulatory Action.*

This fast track action is expected to be non-controversial and the areas of agency discretion are minor. It is irrelevant to providers which agency performs reviews of their services and claims.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)*

The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards Used to Assure High Quality of Services (12 VAC 30-60-140).

Currently, 12 VAC 30-60-140 indicates that the Department of Mental Health, Mental Retardation, and Substance Abuse Services conducts on-site utilization reviews of providers that render community mental health services. These providers are community-based behavioral health services providers. This action replaces *DMAS* or its *contractor* for *Department of Mental*

*Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)* in 12 VAC 30-60-140 to reflect that DMAS conducts utilization reviews. The word “on-site” was removed to reflect that DMAS conducts utilization reviews not only on-site but internally by reviewing provider documentation.

**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.*

This regulatory action corrects language that was outdated and updates the agency’s regulations with the current practice related to the entity that conducts utilization reviews. It will benefit the Commonwealth, the agency and other officials to have the correct and current practice in regulations. There are no disadvantages.

**Requirements more restrictive than federal**

*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 the federal requirements. Title 42 of the Code of Federal Regulations § 440.260 requires that the State Plan for Medical Assistance ‘include a description of methods and standards used to assure that services are of high quality’. These regulations, without which the agency's federal matching funds could be reduced by the federal funding agency, comport with this general requirement.

**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 are no localities that are particularly affected by these regulatory changes as they apply statewide.

**Regulatory flexibility analysis**

*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.*

Alternate regulatory actions were not considered as this action merely identifies current procedures and corrects wording.

**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.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	There is no fiscal impact to this change.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	Providers of community mental health rehabilitative services.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 700 providers of community mental health rehabilitative services
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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</b>	There are no costs to individuals, businesses or others for these changes.

<b>regulations.</b>	
<b>Beneficial impact the regulation is designed to produce.</b>	The regulations will be consistent with current practice.

**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 were considered as this action corrects the existing regulations.

**Family impact**

*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; or 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 and does not affect disposable family income.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12 VAC 30-60-		Refers to on-site utilization reviews performed by	Removes reference to on-site to support DMAS’ desk reviews of providers’

140		DMHMRSAS	documentation. Changes DMHMRSAS to DMAS in conformance to the agencies' interagency agreement currently in effect.