

## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-50-130, 12 VAC 30-50-226, 12 VAC 30-130-5170; 12 VAC 30-130-5190
<b>Regulation title(s)</b>	Skilled nursing facility services, EPSDT, including school health services and family planning. Community mental health services. Peer support services and family support partners: service definitions Peer support services and family support partners: provider and setting requirements.
<b>Action title</b>	Peers Amendments
<b>Date this document prepared</b>	3/29/2018

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*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

This regulatory action corrects citations and removes an annual caseload limit that was found to be a barrier to receiving peer support services. (A limit of 12 to 15 individuals in a peer support specialist's care at any one time remains in place).

### 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 Regulatory Review Summary entitled "Peers Amendments" with the attached amended regulations (12 VAC 50-130, 12 VAC 30-50-226, 12 VAC 30-130-5170;

12 VAC 30-130-5190) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

3/29/2018

Date

/signature/

Jennifer S. Lee, M.D., 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 citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. **Describe 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.*

The purpose of this action is to replace incorrect citations with either correct citations or text. In addition, an annual caseload limit has been removed.

### 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?*

This regulatory action is being promulgated as a fast track action because it is expected to be non-controversial. The citation corrections do not have any impact on providers or Medicaid members. Medicaid providers requested the removal of the annual caseload limit, and this change will not impact Medicaid members.

## Substance

*Please 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.*

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This regulatory action replaces incorrect citations with correct citations. In one instance, a citation has been replaced by text: rather than providing a citation for the requirements for continued services, the medical necessity criteria text for continued services has been included.

Providers of peers services have found that some Medicaid members seek services, but do not follow through on receiving services. Those individuals are counted toward the provider's annual caseload, and the annual limit of 30 to 40 individuals means that providers cannot offer services to individuals who do wish to follow through with services. Therefore, the annual caseload requirement has been removed. The caseload limit of 12 to 15 individuals at any one time remains in place.

## 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.*

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The primary advantages to the Commonwealth and the public from these regulatory changes are that they remove incorrect citations so that the regulations contain accurate cross-references. In addition, removing the problematic annual caseload limit while maintaining the limit on cases open at any given time ensures that providers are available to offer services to individuals who are seeking them, while at the same time ensuring that providers can spend adequate time with each individual.

There are no disadvantages to the Commonwealth or the public as a result of this regulatory action.

## 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.*

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There are no requirements more restrictive than federal contained in these recommendations.

### 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 will be no localities that are more affected than others as these requirements will apply statewide.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.*

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

### 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>	None.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	None.
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Peers providers will be affected by these changes.
<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. Small business means a business entity, including its affiliates, that:</b>	As of January, 2018, there are 33 peers providers, and most of these are small businesses.

<p>a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b> a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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 regulations.</p>	<p>None.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The beneficial impact of this regulatory action is 1) that it will ensure that regulations contain correct citations, and 2) will remove a problematic annual caseload limit so that providers can serve individuals who seek services, which decreases a potential barrier to member access to services.</p>

### 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 other alternatives will correct the existing regulations, or remove the problematic annual caseload limit from the regulations.

### Public participation notice

*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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### 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; nor 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 increase or decrease disposable family income.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this 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, intent, rationale, and likely impact of proposed requirements</b>
12 VAC 30-50-130 B (5)(f)(3)		Citation incorrectly referenced 12 VAC 30-130-5200 D.	Incorrect citation to 12 VAC 30-130-5200 D has been removed.
12 VAC 30-50-130 B (5)(f)(7)		The requirements for continued services were not spelled out in text; rather, a citation was included.	The requirements for continued services are spelled out in text.
12 VAC 30-50-130 B (5)(f)(14)		Citation incorrectly referenced 12 VAC 30-130-5200 G.	The text was corrected to refer to 12VAC30-20-226(B)(7)(l).
12 VAC 30-50-226 B (7)(c)		Citation incorrectly referenced 12 VAC 30-130-5200 D.	Incorrect citation to 12 VAC 30-130-5200 D has been removed.
12 VAC 30-50-226 B (7)(f)		The requirements for continued services were not spelled out in text; rather, a citation was included.	The requirements for continued services are spelled out in text.
12 VAC 30-50-226 B (7)(l)		Citation incorrectly referenced 12 VAC 30-130-5190 E and 5200 G.	The reference to 5190 E was corrected to 5160, and the relevant portions of 5200 G were incorporated in this section.
12 VAC 30-		The first sentence in this	The incorrect limitation was removed

130-5170 C		section was incorrectly limited to ARTS Family support partners.	by removing the word “ARTS.”
12 VAC 30-130-5190 F		An annual caseload limit is removed.	The annual caseload limit is problematic and has been removed.