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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-130-2000
Regulation title(s)	Marketing Requirements and Restrictions
Action title	Amendments to Marketing Requirements
Date this document prepared	

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 amends the marketing rules found in 12 VAC 30-130-2000 to clarify that Community Mental Health (CMH) providers are no longer required to submit their marketing plans and materials to DMAS for review. Providers must continue to adhere to all managed care organizations' and fee-for-service contracts, Medicaid policy, manuals, and regulations related to marketing, outreach, and publicity.

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 "Amendments to Marketing Requirements" with the attached amended regulations (12 VAC 30-130-2000) 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.

_____ _____

Date

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 and to promulgate regulations. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance and to promulgate regulations 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.*

This regulatory revision is essential to protect the health, safety, and welfare of citizens in that it prevents rules that were originally designed for fee-for-service providers from applying to MCO providers. To require providers to submit marketing materials and marketing plans to DMAS and the MCOs for approval would interfere with the oversight responsibilities of the MCO. It is essential that MCO providers remain in compliance with their MCO contract requirements, and repealing this regulation ensures that providers will have one set of rules to follow so that Medicaid members and the public are provided with only appropriate marketing materials using appropriate marketing practices. MCOs are still required to comply with 42 C.F.R. § 438.104.

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. All CMH services are being carved in to MCOs and providers will be complying with MCO contract requirements related to marketing practices. Revising this regulation will ensure that CMH providers have only one set of marketing rules to follow.

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.

Community Mental Health Rehabilitative Services (CMHRS) were added to Commonwealth Coordinated Care Plus (CCC Plus) on January 1, 2018 and providers now contract with CCC Plus MCOs. CMHRS will be added to Medallion 4.0 managed care plans beginning in August, 2018. Each MCO has its own set of marketing rules, which are included in the contract that providers must sign in order to be enrolled with the MCO.

The marketing rules set forth in 12 VAC 30-130-2000 C 4 and E(i) require CMH providers to submit their marketing materials to DMAS for approval prior to their use or dissemination. When CMH providers enroll with MCOs and contract to follow the MCO marketing requirements, the submission to DMAS may create a conflict between the MCO oversight authority and DMAS rules. The revised DMAS rules would eliminate this possible conflict.

In order to establish consistent rules between the MCO and FFS requirements, DMAS has determined that the small number of providers that will only provide CMH services to members with a FFS benefit do not need to submit their marketing materials and plans to DMAS for prior approval. DMAS expects that there will be very few of these providers, as most will be contracted with the MCOs, and that the requirements in C 1-3 and in D will operate effectively to prevent providers from conducting inappropriate marketing activities. (FFS providers will continue to be required to adhere to FFS contracts, Medicaid policy, manuals, and regulations related to marketing, outreach, and publicity.)

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.

The primary advantages to the Commonwealth and the public from these regulatory changes are that they prevent overlap and duplication, as well as potential conflict between two sets of rules relating to marketing practices. This prevents confusion among Medicaid providers while maintaining one set of rules to ensure that providers conduct appropriate marketing efforts.

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.

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 have applied statewide, and the revision of 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.

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**	None.
Projected cost of the new regulations or changes to existing regulations on localities.	None.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	CMH providers, which will no longer be required to submit marketing plans and materials for prior approval.
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: 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.	14,693 CMH providers, as of 3/10/2018. Most of these providers are small businesses.
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: **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.**	None.
Beneficial impact the regulation is designed to produce.	The changes prevent overlap and duplication, as well as potential conflict between two sets of rules relating to marketing practices. This prevents confusion among Medicaid providers while maintaining one set of rules to ensure that providers conduct appropriate marketing efforts.

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 would eliminate the regulatory requirements that are no longer needed.

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 do 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.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-130-2000		C 4 requires CMH providers to submit marketing materials and plans to DMAS for prior approval.	C 4 and E(i) has been removed.