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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-60-5
<b>Regulation title(s)</b>	Applicability of utilization review requirements.
<b>Action title</b>	Community Mental Health Services Documentation of Qualifications
<b>Date this document prepared</b>	February 5, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This fast track regulatory action follows an emergency regulation, which requires providers to maintain documentation to establish that Community Mental Health Services (CMHS) are rendered by individuals with appropriate qualifications and credentials, including proof of licensure or registration when applicable.

The Department of Health Professions registers Qualified Mental Health Professionals as well as those working toward registration as Qualified Mental Health Professionals, and this regulation specifically includes documentation requirements for those individuals.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

- CMHS = Community Mental Health Services
- DBHDS = Department of Behavioral Health and Developmental Services
- DHP = Department of Health Professions
- DMAS = Department of Medical Assistance Services
- QMHP = Qualified Mental Health Professional
- QMHP-A = QMHP serving adult individuals
- QMHP-C = QMHP serving children and adolescents
- QMHP-E = An individual working toward registration as a QMHP, also called a “QMHP Trainee”

**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 “CMHRS Documentation of Qualifications” 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

\_\_\_\_\_  
Jennifer S. Lee, M.D., Director  
Dept. of Medical Assistance Services

**Mandate and Impetus**

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

The 2018 *Acts of the Assembly*, Chapter 2, Item 303.X(1) directed the agency to make changes to the utilization review and provider qualifications for Community Mental Health Services in order to ensure appropriate utilization and cost efficiency. Specifically, the language states:

“The Department of Medical Assistance Services shall make programmatic changes in the provision of Intensive In-Home services and Community Mental Health services in order to ensure appropriate utilization and cost efficiency. The department shall consider all available options including, but not limited to, prior authorization, utilization review and provider qualifications. The Department of Medical Assistance Services shall promulgate regulations to implement these changes within 280 days or less from the enactment date of this Act.”

This action implements changes related to provider qualifications by incorporating the registration requirements previously established by the Department of Health Professions (DHP).

This action is expected to be non-controversial because individuals are required to comply with DHP regulations without regard to any DMAS regulatory language. DMAS is merely updating its regulations to reflect the current state of DHP regulations, rather than establishing any new requirements.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’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.

The 2018 *Acts of the Assembly*, Chapter 2, Item 303.X(1) directed the agency to make changes to the utilization review and provider qualifications for Community Mental Health Services in order to ensure appropriate utilization and cost efficiency. Specifically, the language states:

“The Department of Medical Assistance Services shall make programmatic changes in the provision of Intensive In-Home services and Community Mental Health services in order to ensure appropriate utilization and cost efficiency. The department shall consider all available options including, but not limited to, prior authorization, utilization review and provider qualifications. The Department of Medical Assistance Services shall promulgate regulations to implement these changes within 280 days or less from the enactment date of this Act.”

### Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

The purpose of these regulations is to establish documentation requirements for qualifications and credentials for providers of Community Mental Health Services (including residential treatment services).

### 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.*

DMAS has established provider requirements but regulations are needed to provide clarification to providers of the documentation required to establish that services are rendered by individuals with appropriate qualifications and credentials. The proposed changes will also update the regulations by referring to new DHP requirements for registration of QMHP-Cs, QMHP-As, and QMHP-Trainees.

### Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The primary advantage of this action is that it updates DMAS regulations to refer to DHP regulations. There are no disadvantages to the public, the agency, or the Commonwealth.

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

This action contains no requirements more restrictive than federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to*

*either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

There are no other state agencies that are particularly affected by this action. There are no localities particularly affected by this action as it applies equally statewide.

CMHS providers and registered individuals are already required to follow the DHP requirements. This regulatory package will update DMAS regulations to refer to the DHP requirements.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	No costs, savings, fees, or revenues will result for this agency from this action.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	No costs, savings, fees, or revenues will result for other state agencies from this action.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefit of this regulatory action is that it will align DMAS regulations with DHP requirements.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs, savings, fees or revenues for localities resulting from this action
Benefits the regulatory change is designed to produce.	The benefit of this regulatory action is that it will align DMAS regulations with DHP requirements.

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	CMHS providers and registered individuals are already required to follow the DHP requirements. This regulatory package will update DMAS regulations to refer to the DHP requirements.
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:	There are approximately 4270 CMHS providers who employ Qualified Mental Health Professionals.

<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>As of December, 2018, there were the following numbers of Qualified Mental Health Practitioners registered with DHP:                  QMHP-Adult: 5,270                  QMHP-Child: 4,823                  QMHP-Trainee: 717</p> <p>Approximately 600 QMHPs have submitted registration applications that are pending, and about 100 applications are coming in to DHP each day.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:                  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;                  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;                  c) fees;                  d) purchases of equipment or services; and                  e) time required to comply with the requirements.</p>	<p>There are no projected costs resulting from this action.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit of this regulatory action is that it will align DMAS regulations with DHP requirements.</p>

**Alternatives**

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

No other alternatives will align DMAS regulations with DHP regulations.

**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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

No alternative methods will align DMAS regulations with DHP regulations.

## Public Participation

*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.*

No comments were received during the NOIRA comment period.

## Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

*If the regulatory change will be 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 change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

This Fast Track action follows an Emergency/NOIRA. The changes that were made in the Emergency/NOIRA are:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12VAC30-60-5		<p>Paragraphs B and H4 refer to the behavioral health services administrator or the BHSA.</p> <p>Item #2 under paragraph B was incorrectly placed – it did not relate only to service authorization.</p> <p>There was no requirement related to staff qualifications.</p>	<p>These references were simplified to “contractor”.</p> <p>Item #1 was combined with paragraph B and Item #2 was made a stand-alone requirement in a new paragraph C so that documentation requirements are not limited to service authorization.</p> <p>A new paragraph D was added related to staff qualifications.</p> <p>Paragraphs were re-lettered.</p> <p>Paragraph H1 was edited to separate requirements related to DBHDS licensing from requirements related to Medicaid Provider Enrollment Agreements. Content related to</p>

		<p>There is no documentation requirement specifically related to qualifications and credentials for QMHPs.</p>	<p>enrollment agreements was moved to paragraph H3.</p> <p>DBHDS is the only entity that issues provisional licenses; paragraph H2 was amended to reflect this. The reference to community mental health providers was removed, as this duplicates the language in paragraph H.</p> <p>The reference to provisional licenses was removed from paragraph H3 because that requirement is already in paragraph H2.</p> <p>A documentation requirement was added in a new paragraph H5 related to qualifications and credentials for QMHPs, including proof of licensure or registration through DHP when applicable. DMAS contracted MCOs new services are carved in.</p>
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The changes between the ER and the Fast Track are:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-60-5			B – references to the DMAS “service authorization contractor or the behavioral health service authorization contractor” are replaced with “its contractor”
			H1 – the last two sentences are removed and the content is moved to paragraph H3
			<p>H3 – “Payments” is changed to “reimbursement.”</p> <p>H3 – the text “either to hold provisional licenses” is removed because it duplicates text in paragraph H2.</p> <p>In addition, the following text is added: , “or fail to maintain a current Medicaid Provider Enrollment Agreement. If services are provided through a Managed Care Organization (MCO), services shall not be reimbursed unless the provider is also enrolled with the MCO as a Medicaid provider.”</p>
			H 4 – “behavioral health service authorization contractor” is changed to “DMAS contractor.”

			<p>H5 – “QMHP-Es” is changed to “qualified mental health professional-eligibles (as defined by DBHDS)”</p> <p>“QMHP-C” is changed to “qualified mental health professional-child.”</p> <p>“QMHP-A” is changed to “qualified mental health professional-adult as those terms are defined by DBHDS.”</p>
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