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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-60-5
Regulation title(s)	Applicability of Utilization Review Requirements
Action title	Utilization Review Changes
Date this document prepared	10/30/2015

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.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

DMAS is implementing regulatory changes to standardize the utilization review process for all provider types, including the deadlines for providers to submit documentation, and to standardize documentation deadlines for the cost settlement process. The changes are consistent with several opinions from the Virginia Court of Appeals (*1st Stop Health Services, Inc. vs. DMAS*, 63 Va. App. 266, 756 S.E.2d 183, 2014 Va. App. LEXIS 131 (April 8, 2014) and *DMAS v. Ablix Corporation*, 2015 Va. App. LEXIS 82 (March 17, 2015).) In *1st Stop*, the Court of Appeals held that supplemental documentation and testimony offered by the audited provider at the formal hearing did not cure the provider's failure to supply adequate documentation at the time of the audit. In *1st Stop* and *Ablix*, the Court emphasized the requirement that providers maintain accurate, contemporaneous documentation of services provided as specified in the Provider Agreement, which incorporates by reference the applicable laws, regulations and policy manuals. The Court also reaffirmed the policy that all provider documentation required to support claims

for reimbursement must be maintained prior to and submitted by the provider at the time of the audit.

DMAS is considering both organizational and text changes to its regulations to standardize the audit process, including what letters are sent to providers, what documentation may be submitted and when it may be submitted, and what deadlines apply. DMAS is considering changes that would apply to audit processes and cost settlement processes.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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'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 describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to implement regulatory changes to more accurately reflect DMAS audit procedures and to incorporate recent developments. This action will not affect the health, safety, or welfare of Medicaid individuals or citizens of the Commonwealth. It is expected to affect Medicaid's audited providers whose documentation is found to be insufficient support for services billed and paid.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

DMAS is considering language that will standardize utilization review requirements for both Medicaid and State Children's Health Insurance Program (FAMIS) covered services, and for both audits and institutional cost settlements. DMAS will standardize the deadlines for submission of documentation during utilization review and cost settlements.

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.

There are no viable alternatives to including these changes in regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to **Emily McClellan, Regulatory Supervisor, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-371-4300, Emily.McClellan@dmas.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.