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MEMORANDUM

TO: Emily McClellan
Department of Medical Assistance Services

FROM: Abrar Azamuddin *AA*
Assistant Attorney General

DATE: December 28, 2018

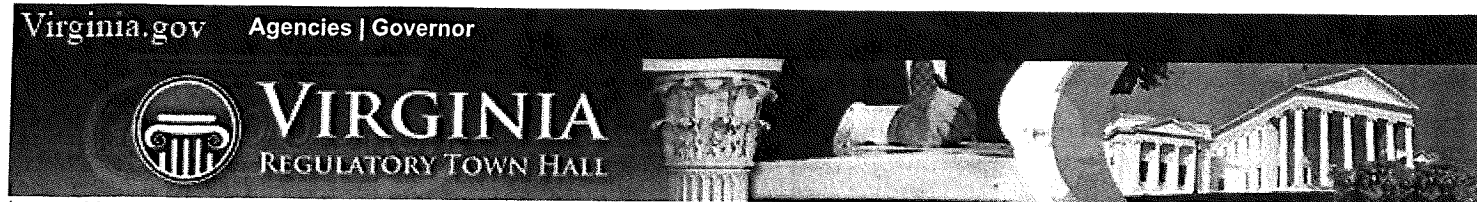
SUBJECT: Fast Track Regulations regarding Amendments to the Marking Regulations,
12 VAC 30-130

I have reviewed the attached proposed regulations, which would amend regulations governing the marketing of Medicaid. Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Virginia Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate these regulations, not the appropriateness of whether it should be promulgated pursuant to the fast track process. Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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 Department of Medical Assistance Services shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulations serving as the Notice of Intended Regulatory Action.

If you have any questions or need any additional information, please feel free to call me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General



Logged in as

Abrar Azamuddin

Proposed Text

Action: Amendments to Marketing Regulations**Stage:** Fast-Track

7/17/18 11:40 AM

Part XVII

Marketing of Provider Services

12VAC30-130-2000. Marketing requirements and restrictions.

A. Purpose. The purpose of these rules shall be to define how providers shall be permitted to market their services to potential Medicaid or FAMIS beneficiaries and individuals who may or may not be currently enrolled with the particular provider. This shall apply to providers of community mental health services (12VAC30-50-226) and Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) community mental health services (12VAC30-50-130) with the exception of Part C services.

B. Definitions.

"Beneficiaries" means individuals of any age and their families who are using or who may use community mental health rehabilitative services.

"DMAS" means the Department of Medical Assistance Services.

"FAMIS" means Family Access to Medical Insurance Security.

"Marketing materials" means any material created to promote services through any media including, but not limited to, written materials, television, radio, websites, and social media.

"Provider" means an individual or organizational entity that is appropriately licensed as required and enrolled as a DMAS provider of community mental health and substance abuse services.

C. Requirements.

1. Marketing and promotional activities (including provider promotional activities) shall comply with all applicable federal and state laws.

2. Providers shall provide clearly written materials that completely and accurately describe the Medicaid or FAMIS behavioral health service or services offered, the beneficiary eligibility requirements to receive the service or services, applicable fees and other charges, and all other information required for beneficiaries and their families to make fully informed decisions about enrollment into the service or services offered by the provider that is marketing its services.

3. Providers shall distribute their marketing materials only in the service locations approved within the license issued by the Licensing Division of the Department of Behavioral Health and Developmental Services.

~~4. Providers shall receive DMAS approval of all marketing materials and all changes to prior approved marketing materials prior to their use or dissemination.~~

~~Providers shall receive the DMAS marketing plan approval before engaging in any marketing activity.~~

~~a. Within 30 calendar days of receipt of providers' submissions, DMAS shall review submitted individual marketing materials and services and either approve them or deny their use or direct that specified modifications be made.~~

~~b. Providers failing to implement DMAS' required changes, or those which use unapproved or disapproved materials, shall be subject to termination of the provider agreement pursuant to 12VAC30-130-2000 E.~~

D. Limits and prohibitions.

1. Providers shall not offer cash or noncash incentives to their enrolled or prospective members for the purposes of marketing, retaining beneficiaries within the providers' services, or rewarding behavior changes in compliance with goals and objectives stated in beneficiaries' individual service plans.

2. While engaging in marketing activities, providers shall not:

a. Engage in any marketing activities that could misrepresent the service or DMAS;

b. Assert or state that the beneficiary must enroll with the provider in order to prevent the loss of Medicaid or FAMIS benefits;

c. Conduct door-to-door, telephone, unsolicited school presentations, or other cold call marketing directed at potential or current beneficiaries;

d. Conduct any marketing activities or use marketing materials that are not specifically approved by DMAS;

e. Make home visits for direct or indirect marketing or enrollment activities except when specifically requested by the beneficiary or family;

f. Collect or use Medicaid or FAMIS confidential information or Medicaid or FAMIS protected health information (PHI), as that term is defined in Health Insurance Portability and Accountability Act of 1996 (HIPAA), that may be either provided by another entity or obtained by marketing provider, to identify and market services to prospective beneficiaries;

g. Violate the confidential information or confidentiality of PHI by sharing or selling or sharing lists of information about beneficiaries for any purposes other than the performance of the provider's obligations relative to its DMAS provider agreement;

h. Contact, after the effective date of disenrollment, beneficiaries who choose to disenroll from the provider except as may be specifically required by DMAS;

i. Conduct service assessment or enrollment activities at any marketing or community event; or

j. Assert or state (either orally or in writing) that the provider is endorsed either by the Centers for Medicare and Medicaid Services, DMAS, or any other federal or state governmental entities.

E. Termination. Providers that ~~(i) conduct any marketing activity that is not specifically approved by DMAS,~~ (i) violate any of the prohibitions in this section, or (ii) fail to meet requirements shall be subject to termination of their provider agreements for the services affected by the marketing plan/activity. Providers whose contracts are terminated shall be afforded the right of appeal pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).