

## FINAL BMAS MINUTES

Tuesday March 8, 2022

10:00 AM

**Present:** Michael H Cook Esq., Chair; Ashley Gray; Maureen S Hollowell; Patricia T Cook, MD; Greg Peters; Kannan Srinivasan, Vice Chair; and Elizabeth Noriega

**Virtual Attendance:** Dr. Basim Khan, and Raziuddin Ali, MD

**Absent:** Elizabeth Coulter and Peter R. Kongstvedt, MD

### **DMAS Staff Present:**

Davis Creef, Legal Counsel for the Board, Office of the Attorney General

Karen Kimsey, DMAS Director

Sarah Hatton, Deputy Director of Administration

Mariam Siddiqui, Senior Operations Advisor

Richard Traylor, Senior Finance & Technology Compliance Advisor

Brian McCormick, Director of Legislation and Intergovernmental Affairs

Rich Rosendahl, Chief Health Economist

Cheryl Roberts, Deputy Director of Programs

Christina Nuckols, Director of Strategic Communications

Chris Gordon, CFO

Will Frank, Senior Legislative Affairs Advisor

Ivory Banks, Chief of Staff

Natalie Pennywell, Outreach & Community Engagement Manager

Tammy Whitlock, Deputy Director of Complex Care

Emily McClellan, Director of Policy, Regulation, and Member Engagement

Nancy Malczewski, Public Information Officer

Dorothy Swann, Public Information Officer

Guests:

The Honorable John Littel, Secretary of Health and Human Resources

### **1. Call to Order**

Meeting was called to order at 10:03 a.m.

### **2. Introductions**

DMAS Director, Karen Kimsey, introduced Secretary John Littel

Then Michael Cook asked that everyone introduce themselves.

Secretary Littel spoke briefly about the 2022 legislative session, noting that human services are often subject to budget cuts, but this year there are more resources, and so HHR can begin to act on issues that they've been wanting to address for many years. He also noted that the Agency's vision for Medicaid program should include best in class services, best in class outcomes and best in class stewardship of tax payer dollars.

Michael Cook asked for a moment of silence for solidarity for the Ukrainians.

### **3. Approval of Minutes**

Approval of November 30, 2021 Minutes

Motioned by Greg Peters; seconded by Patricia Cook, MD to approve.

Motion Passed: 7 - 0

Voting For: Michael Cook, Esq.; Maureen Hollowell; Ashley Gray; Greg Peters;  
Elizabeth Noriega; Patricia Cook, MD; and Kannan Srinivisan

Voting Against: None

Unanimous approval

### **4. Election of Officers**

For the election of officers, Brian McCormick moderated the election and had each member vote one by one signifying by saying “aye” or “nay.” Because of state “open meeting laws,” the votes of those participating virtually could not be counted since they were not physically present.

Michael Cook was nominated by Kannan Srinivasan for the Board Chair, the motion was seconded by Maureen Hollowell. Hearing no further nominations, the nominations were closed. The vote was taken.

Voting “aye,” Kannan Srinivisan; Patricia Cook, MD; Elizabeth Noriega; Greg Peters;  
Maureen Hollowell; Ashley Gray; and Michael Cook

Voting Against: None

Unanimous approval (7 – 0)

Kannan Srinivisan was nominated by Michael Cook for the Board Vice Chair, the motion was seconded by Greg Peters. Hearing no further nominations, the nominations were closed. The vote was taken.

Voting “aye,” Michael Cook; Maureen Hollowell; Ashley Gray; Greg Peters; Elizabeth  
Noriega; Patricia Cook, MD; and Kannan Srinivasan

Voting Against: None

Unanimous approval (7 - 0)

Even though Brooke Barlow was not at the meeting, due to a special assignment, she was nominated by Michael Cook for Board Secretary; the motion was seconded by Ashley Gray. Hearing no further nominations, the nominations were closed. The vote was taken.

Voting “aye,” Michael Cook; Maureen Hollowell; Ashley Gray; Greg Peters; Elizabeth  
Noriega; Patricia Cook, MD; and Kannan Srinivasan

Voting Against: None

Unanimous approval (7 - 0)

#### **4. Director's Report – Karen Kimsey**

##### **Medicaid Enterprise System (MES) Update:**

Director Kimsey explained we were upgrading our systems from a single system to a modular system that can more easily adapt to change while supporting our Agency's mission. Additionally, an April 4<sup>th</sup> implementation is still on track for fee for service providers in Phase 1 and managed care network providers, beginning June 2022 in Phase 2.

Director Kimsey provided an overview of the various training resources available for providers, staff and stakeholders as a part of Operation Readiness.

Additionally, Director Kimsey spoke about the five-day MMIS outage, March 30<sup>th</sup> – April 3<sup>rd</sup>, necessary for execution of key pre-launch steps, reviewed the agency functions impacted and DMAS mitigation efforts relating to contingencies and COOP execution.

#### **5. Budget Report – Chris Gordon, CFO**

Chris Gordon presented a slide deck that described DMAS' key fiscal metrics:

- Prompt Pay to Medicaid Providers
- Agency Small, Women, and Minority contracts (SWAM)
- Fiscal Year 2022 Appropriations (\$17.8 billion)
- Medical Spend (through Jan. '22 - \$1,030,661,467)
- MCO Expenditures and Performance
- American Rescue Plan Act (ARPA) Va. Funding – \$1K bonus for home health care workers, 12.5% HCBS rate increases, \$5 per diem for NFs, and \$15M to address the Enrollment & Eligibility backlog
- Budget Amendments from the 2022 General Assembly (DMAS tracking 39 mandates)
- MES Schedule Performance Index – all systems go!

#### **6. Legislative Report – Will Frank, Senior Advisor for Legislative Affairs**

Will explained his role as it relates to the GA session

- Monitor legislation and review every bill
- Flag bills important to DMAS
- Review legislation, language and budget for the Secretary and Governor
- Communicate the positions of the Secretary and Governor to the General Assembly
- Provide expert testimony and technical assistance to legislators

DMAS was assigned 21 bills out of just under 3000 introduced. At the time of meeting, 11 were alive and ten had failed. Twenty three comments were made to other agencies' bills and another 82 were tracked. Other key bills discussed included HB241, HB680, HB800, HB987, SB231, SB426, SB594, SB663, HB925 and SB405.

## 7. Report on “Unwinding” – Sarah Hatton and Natalie Pennywell

Sarah Hatton presented a slide deck providing a thorough explanation of the federally mandated process DMAS must follow to redetermine Medicaid eligibility for all members in the year following the close of the federal COVID-19 Public Health Emergency (PHE). The key point is that states are required to maintain enrollment of all Medicaid members until the end of the PHE, including the “continuous coverage” of members requirement. In the next 12 months DMAS must redetermine every Medicaid member’s eligibility status. To prepare for this massive effort, DMAS has developed a detailed plan for the 12-month staged review, implement IT systems automation to quickly and efficiently process eligibility renewals, and significantly augmented eligibility DMAS staff to handle the several million renewals to complete the unwinding. In addition, DMAS significantly enhancing its outreach & stakeholder engagement process to ensure that the Agency has contact information for all members, in order to provide essential notice and access to eligibility staff.

### Break for lunch

## 8. New Business/Old Business

### Old Business – ByLaws Amendment – 2.7 Electronic Participation in Meetings

Michael Cook noted that we started another amendment to the Board of Medical Assistance Services (BMAS) Bylaws at the last meeting and asked Davis Creef to take over the meeting. Davis Creef noted that this was discussed generally at the last meeting.

The proposed ByLaws Amendment language of 2.7 Electronic Participation in Meetings was previously brought forth, but there was controversy of some language in item 4. The language in red was submitted to be reviewed by the Board.

This would allow remote participation under certain circumstances by board members, it basically follows language found in the Virginia Code; and there was concern at the last meeting it might require a board member to disclose medical information if they were participating remotely due to a permanent or temporary disability or another family member's medical condition.

As seen, the red text was added to make it clear. There is no requirement in the Code that the specific medical condition be disclosed, which is different than a board member is participating remotely for a personal matter. Personal matters must be disclosed with specificity. Assuming that the board is okay with this language, it will be brought up at the next meeting and be voted for official adoption into the Bylaws at that time. It is a two-step process for an amendment.

2.7 Electronic Participation in Meetings – An individual member may participate in a meeting of the Board or a public meeting of any committee established by the Board through electronic communication from a remote location for the following reasons, as permitted by § 2.2-3708.2 of the Code of Virginia:

1. A temporary or permanent disability or other medical condition prevents the member’s physical attendance;
2. A family member’s medical condition that requires the member to provide care for such family member, thereby preventing the member’s physical attendance; or
3. A personal matter prevents the member’s physical attendance.

### **Procedure for Approval:**

1. **Notification:** The member requesting to participate through electronic communication from a remote location must notify the Board or committee chair on or before the day of the meeting.
2. **Quorum:** A quorum of the Board, or a simple majority of the committee, must be physically assembled at the primary or central meeting location identified in the public notice required for the meeting.
3. **Technological Arrangements:** Arrangements must be made for the voice of the remote participant to be heard by all persons at the primary or central meeting location.
4. **Documentation:** The specific reason the member is unable to attend the meeting, and the remote location from which the member participates, shall be recorded in the meeting minutes; notwithstanding this disclosure requirement, the specific medical condition(s) or related clinical information affecting the member requesting virtual participation shall not be publicly disclosed but will instead be treated as consistent with Protected Health Information. The nature of the personal matter shall also be included in the minutes. Pursuant to Va. Code § 2.2-3708.2(A)(2), the remote location from which the member participates need not be open to the public.
5. **Limitation:** Members may only participate through electronic communication due to personal matters for no more than two meetings of the Board or committee per calendar year. This limitation shall not apply to electronic participation due to a member's disability or medical condition, or to a family member's medical condition that prevents the member's physical attendance.
6. **Approval Process:** A member's participation from a remote location shall be approved by a vote of the other members of the Board or committee, unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act (FOIA). If the other members of the Board or committee vote to disapprove the member's electronic participation from a remote location, such disapproval shall be recorded in the minutes.

Michael Cook asked if there was any discussion on the language or if everyone approved. No one had any comments; therefore, the approved language will be voted on at the next meeting.

### **9. Regulations – Emily McClellan**

Emily McClellan provided the BMAS members a Summary of the Agency's regulatory activity. Ms. McClellan provided an extensive list of all DMAS regulations currently in the public promulgation process, noting the following groups of regulations by General Assembly year:

2022 - 5 packages  
2021 - 25 package  
2020 – 5 packages  
2019 – 1 package  
2018 – 2 packages  
2017 – 1 package  
2015 – 1 package

### **10. Regulatory 101 – Emily McClellan**

The Policy Division is charged with following and pursuing the regulatory processes to make sure DMAS gets its regulations in place. Regulations are needed when there is a "pay or no pay

decision” involved and if there is an “adverse decision” -- is a provider going to get paid for a service and is a member going to be able to benefit from services that are reimbursed by Medicaid.

We work within the Virginia framework, which applies to all state agencies and requires that: 1) regulations involve the least possible intrusion into the lives of the citizens of commonwealth; 2) regulations are necessary to protect public health, safety and welfare; and 3) that agencies actively seek input from stakeholders on planned regulatory changes.

DMAS has general authority to develop or amend regulations. DMAS does not need a specific grant of authority from the General Assembly unless there is a cost associated with the change – then a legislative mandate is needed.

The Virginia Code delegates authority to the Agency Director; the Director may sign off on regulatory packages.

There are several types of regulatory actions. There are two three-stage processes and two one-stage processes.

The “typical” three-stage processes typically take three years from beginning to end. Once the notice of intend regulatory action is signed by the DMAS Director, it goes to the Office of the Attorney General for its review; then to the Department of Planning and Budget. Then it goes to the Secretary of Health and Human Resources; then to the Governor and then it has a 30-day comment period and then it goes back to DMAS. The second part of the three-stage process goes through all those same steps again, except with a longer comment period. Then there is a third and final stage.

We try to update our Medicaid manuals quickly so those Medicaid manuals serve as our state authority until the regulations can be finalized. A budget item may direct DMAS to move forward with the changes in this budget provision based on federal authority even if the regulations have not yet been promulgated. Then we technically have legislative approval to move forward even though we don't have regulations in place.

Another three-stage process is the Emergency Regulatory process. DMAS must have authority from the General Assembly for an emergency regulation. An emergency regulation goes through all the same stages as the traditional process but the ER goes into effect after ER/NOIRA is finalized, which is typically six to nine months. There are several cautions with emergency regulations: 1) they are temporary and are not added to the Virginia Administrative Code (they last 18 months with one possible 6-month extension) and 2) there is frequently a “gap” between the end of the emergency regulation and the finalization of the permanent regulations.

The Fast Track regulatory process is a one-stage process that can be used if the regulations are not controversial. This process usually takes six to nine months. During the waiting period after publication in the Virginia Register, if there are ten or more objections to Fast Track process, the regulations must be withdrawn and the three-stage process should be initiated.

Final Exempt regulations are another one-stage process, and generally only take three to six months to take effect. A final exempt process may only be used if there is a:

- Federal statutory requirement, or
- Federal regulatory requirement, or
- State budget or statute (within 90 days of enactment) or
- Court order

AND no discretion.

Once the regulations are signed by DMAS director, they go to the OAG, and then are published in the Register. They do not become final until 45 days after publication.

To obtain the authority for a final exempt action, DMAS may submit budget language for the next General Assembly session with wording describing exactly what needs to be accomplished, with no undecided issues or discretion.

## **11. Adjournment**

Michael Cook asked for a motion to adjourn the meeting at 2:00 p.m. Motion to adjourn was made by Kannan Srinivasan; seconded by Greg Peters

Adjourn. Motion Passed: 7 - 0

Voting For: Michael Cook; Maureen Hollowell; Ashley Gray; Greg Peters; Elizabeth Noriega; Patricia Cook, MD; and Kannan Srinivasan

Voting Against: None