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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-50-440, -50-450, 50-490: REPEALING; 12 VAC 30-50-455: ADDING; 12 VAC 30-60-360; 12 VAC 30-120-500 et seq. ADDING; 12 VAC 30-120-700 et seq. CHANGING; 12 VAC 30-120-1000 et seq. CHANGING; 12 VAC 30-120-1500 et seq. CHANGING
Regulation title(s)	Case Management; Criteria for care in facilities for mentally retarded persons; Waiver Services: Individual and Family Developmental Disabilities Support Waiver (Family and Individual Supports); Intellectual Disability Waiver (Community Living); Day Support Waiver for Individuals with Mental Retardation (Building Independence)
Action title	Three Waivers Redesign
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 action concerns the redesign of three of DMAS' existing home and community based waivers: Individual and Family Developmental Disabilities Support Waiver (12 VAC 30-120-700 *et seq.*) is changing to the Family and Individual Supports Waiver (FIS); Intellectual

Disability Waiver (12 VAC 30-120-1000 *et seq.*) is changing to the Community Living Waiver (CL), and; the Day Support Waiver for Individuals with Mental Retardation (12 VAC 30-120-1500 *et seq.*) is changing to the Building Independence Waiver (BI).

This redesign effort, a collaboration among DMAS, DBHDS, consultants, and stakeholders for the last two years, combines the target populations of individuals with intellectual disabilities and other developmental disabilities and offers new services that are designed to promote improved community integration and engagement. This redesign is intended to: (i) better support individuals with disabilities to live integrated and engaged lives in their communities; (ii) standardize and simplify access to services; (iii) cover services that promote community integration and engagement; (iv) improve providers' capacity and quality by increasing compensation as they increase expertise; (v) achieve better outcomes for individuals supported in smaller community settings, and; (vi) facilitate meeting the Commonwealth's commitments under the community integration mandate of the American with Disabilities Act (42 USC 12101 *et seq.*), the Supreme Court's *Olmstead* Decision, and the 2012 DOJ Settlement Agreement.

Significant input throughout the redesign process has been collected from individuals, their families, affected providers, advocates and other stakeholders as well as national experts. Extensive data has been collected to redesign the current waiver system in order to more closely link medical/support needs with expenditures. For individuals with intellectual/developmental disabilities and their families, the system will be accessed via a single local point of entry (the Community Services Boards/Behavioral Health Authorities (CSB/BHAs)).

An expanded array of service options over those currently covered in the existing waivers is recommended to enable individuals with disabilities to successfully live in their communities. New services include: (i) crisis support (including center-based and community-based) services; (ii) shared living supports; (iii) independent living supports; (iv) supported living residential; (v) community engagement supports; (vi) community coaching supports; (vii) community guide supports; (viii) workplace assistance services; (ix) private duty nursing; and (x) electronic home based supports.

Some currently existing services are being modified and one existing service (prevocational services) is being repealed. Current services include: (i) skilled nursing services; (ii) therapeutic consultation; (iii) personal emergency response systems; (iv) assistive technology; (v) environmental modifications; (vi) personal assistance services; (vii) companion services; (viii) respite services; (ix) group day services; (x) group home services; (xi) sponsored residential services; (xii) individual and family caregiver training; (xiii) supported living; (xiv) supported employment; (xv) transition services, and; (xvi) services facilitation.

DMAS and DBHDS recommend retaining the consumer-direction model of service delivery for personal assistance, companion, and respite services as currently permitted with no further expansion of this model to any of the other existing or new services.

In addition to these new services, all individuals will be evaluated with the use of a common assessment instrument (the Supports Intensity Scale (SIS®)) resulting in the development of their unique Individual Service Plans. Seven levels of supports will be established for the

purpose of creating the most equitable distribution of funding for core waiver services. Common definitions of intellectual disability and developmental disability are recommended. Standards for a single uniform waiting list are also recommended as well as criteria for how individuals on the waiting list will be provided their choice of available services. Since these three waivers' target populations are being merged under the single definition of developmental disability, the regulations' individual eligibility sections are also being merged into a single set of regulations at 12 VAC 30-120-500 et seq.

DMAS' case management regulations (12 VAC 30-50-440, 12 VAC 30-50-450 and 12 VAC 30-50-490) are being repealed and replaced with updated case management regulations to be located at 12 VAC 30-50-455.

DMAS' longstanding regulations titled 'Criteria for care in facilities for mentally retarded persons' (12 VAC 30-60-360) is being renamed as 'Criteria for care in facilities for individuals with developmental disabilities'. One phrase is being removed from this regulation ('or waived rehabilitative services for the mentally retarded' (12 VAC 30-60-360 B)) relevant to this regulatory action because for this waiver re-design, the level of functioning criteria for institutional services is being replaced with the Virginia Individual Developmental Disabilities Eligibility (VIDES) Survey (for infants, children, and adults) as established in 12 VAC 30-120-500 et seq. The other changes indicated for 12 VAC 30-60-360 are technical corrections to update the regulation to the Registrar's current format and labeling standards.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Section 2.2-4011 of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4).

The *2015 Acts of the Assembly*, Chapter 665, Item 301 MMMM (2) directed: "The Department of Medical Assistance Services, in collaboration with the Department of Behavioral Health and Developmental Services, shall report on plans to redesign the Medicaid comprehensive Intellectual and Developmental Disability waivers prior to the submission of a request to the Centers for Medicare and Medicaid Services to amend the waivers. In developing the report, the departments shall include plans for the list of services to be included in each waiver, service limitations, provider qualifications, and proposed licensing regulatory changes; and proposed changes to the rate structure for services and the cost to implement such changes. The Department of Medical Assistance Services, in collaboration with the Department of Behavioral Health and Developmental Services, shall report on how the individuals currently served in the

existing waivers and those expected to transition to the community will be served in the redesigned waivers based on their expected level of need for services."

The 2016 Acts of the Assembly, Chapter 780, Item 306 CCCC also directed: "1. The Department of Medical Assistance Services shall adjust the rates and add new services in accordance with the recommendations of the provider rate study and the published formula for determining the SIS® levels and tiers developed as part of the redesign of the Individual and Family Developmental Disabilities Support (DD), Day Support (DS), and Intellectual Disability (ID) Waivers. The department shall have the authority to adjust provider rates and units, effective July 1, 2016, in accordance with those recommendations with the exception that no rate changes for Sponsored Residential services shall take effect until January 1, 2017. The rate increase for skilled nursing services shall be 25 percent."

"2. The Department of Medical Assistance Services shall have the authority to amend the Individual and Family Developmental Disabilities Support (DD), Day Support (DS), and Intellectual Disability (ID) Waivers, to initiate the following new waiver services effective July 1, 2016: Shared Living Residential, Supported Living Residential, Independent Living Residential, Community Engagement, Community Coaching, Workplace Assistance Services, Private Duty Nursing Services, Crisis Support Services, Community Based Crisis Supports, Center-based Crisis Supports, and Electronic Based Home Supports; and the following new waiver services effective July 1, 2017: Community Guide and Peer Support Services, Benefits Planning, and Non-medical Transportation. The rates and units for these new services shall be established consistent with recommendations of the provider rate study and the published formula for determining the SIS levels and tiers developed as part of the waiver redesign, with the exception that private duty nursing rates shall be equal to the rates for private duty nursing services in the Assistive Technology Waiver and the EPSDT program. The implementation of these changes shall be developed in partnership with the Department of Behavioral Health and Developmental Services."

"3. Out of this appropriation, \$328,452 the first year and \$656,903 the second year from the general fund and \$328,452 the first year and \$656,903 the second year from nongeneral funds shall be provided for a Northern Virginia rate differential in the family home payment for Sponsored Residential services. Effective January 1, 2017, the rates for Sponsored Residential services in the Intellectual Disability waiver shall include in the rate methodology a higher differential of 24.5 percent for Northern Virginia providers in the family home payment as compared to the rest-of-state rate. The Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services shall, in collaboration with sponsored residential providers and family home providers, collect information and feedback related to payments to family homes and the extent to which changes in rates have impacted payments to the family homes statewide."

"4. For any state plan amendments or waiver changes to effectuate the provisions of paragraphs CCCC 1 and CCCC 2 above, the Department of Medical Assistance Services shall provide, prior to submission to the Centers for Medicare and Medicaid Services, notice to the Chairmen of the House Appropriations and Senate Finance Committees, and post such changes and make them easily accessible on the department's website."

"5. The department shall have the authority to implement necessary changes upon federal approval and prior to the completion of any regulatory process undertaken in order to effect such changes."

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Three Waivers Redesign (12 VAC 30-50-455, 12 VAC 30-60-360, 12 VAC 30-120-500 et. seq., 12 VAC 30-120-700 et seq., 12 VAC 30-120-1000 et seq., and 12 VAC 30-120-1500 et seq.) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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.

In addition, Section 2.2-4011 of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

The Governor's approval of this emergency regulation is requested as well as the authority for DMAS to initiate the permanent rule making process established in § 2.2-4007 of COV.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purposes of this action are to: (i) better support individuals with developmental disabilities to live integrated and engaged lives in their communities; (ii) standardize and simplify access to services; (iii) cover services that promote community integration and engagement; (iv) improve providers' enhanced capacity and quality by increasing compensation as they increase expertise; (v) achieve positive outcomes for individuals supported in smaller community settings, and; (vi) facilitate meeting the Commonwealth's commitments under the community integration mandate

of the American with Disabilities Act (42 USC § 12101 *et seq.*), the Supreme Court's *Olmstead* Decision, and the 2012 DOJ Settlement Agreement.

Need

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, delineate any potential issues that may need to be addressed as the regulation is developed.

These changes are designed to improve the health, safety and welfare of these individuals with developmental disabilities and their families. These redesigned waivers will support reducing the waivers' waiting lists by providing the right services to the right individual at the right time through improved choice and flexibility, improved understanding of personal needs and preferences, and appropriate service utilization.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

The regulations that are affected by this action are: Case Management (12 VAC 30-50-440; 12 VAC 30-50-450; 12 VAC 30-50-490 are repealing; 12 VAC 30-50-455 is adding); Waiver Eligibility Standards and Waiting List Requirements (12 VAC 30-120-500 *et seq.* are adding); the Individual and Family Developmental Disabilities Waiver (12 VAC 30-120-700 *et seq.* are changing/adding); the Intellectual Disability Waiver (12 VAC 30-120-1000 *et seq.* are changing/adding), and; the Day Support Waiver for Individuals with Mental Retardation (12 VAC 30-1500 *et seq.* are changing/adding).

CURRENT POLICY

Individual and Family Developmental Disabilities Support (DD) Waiver

This waiver was originally developed in 2000 to serve the needs of individuals and their families, who require the level of care provided in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) (formerly Intermediate Care Facilities for the Mentally Retarded (ICF/MR)). Such individuals must be older than six years of age and have diagnoses of either autism or severe chronic disabilities identified in 42 CFR 435.1009 (cerebral palsy or epilepsy, any other condition (other than mental illness) that impairs general intellectual functioning, manifests itself prior to the individual's 22nd birthday, is expected to continue indefinitely, and results in substantial limitation of three or more areas of major life activity (self-

care, language, learning, mobility, self-direction, independent living). The originally covered services were: (i) in-home residential support; (ii) day support; (iii) prevocational services; (iv) supported employment services; (v) therapeutic consultation; (vi) environmental modifications; (vii) skilled nursing; (viii) assistive technology; (ix) crisis stabilization; (x) personal care and respite (both agency directed and consumer directed); (xi) family/caregiver training; (xii) personal emergency response systems, and; (xiii) companion services (both agency directed and consumer directed).

In SFY 2015, this waiver served 913 individuals/families with expenditures of: \$28,747,525. Acute care costs for these individuals totaled \$9,388,868.

Intellectual Disabilities (ID) Waiver

This waiver was originally developed in 1991 to serve the needs of individuals and their families, who are determined to require the level of care in an ICF/IID. Such individuals must have a diagnosis of intellectual disability or if younger than six years old, be at developmental risk of significant limitations in major life activities. The services covered in ID are: (i) assistive technology; (ii) companion services (both agency-directed and consumer-directed); (iii) crisis stabilization; (iv) day support; (v) environmental modifications; (vi) personal assistance and respite (both agency-directed and consumer-directed); (vii) personal emergency response systems; (viii) prevocational services; (ix) residential support services; (x) services facilitation (only for consumer-directed services); (xi) skilled nursing services; (xii) supported employment; (xiii) therapeutic consultation, and; (xiv) transition services.

In SFY 2015, this waiver served 10,174 individuals/families with expenditures of: \$693,861,042. Acute care costs for these individuals totaled \$138,928,215.

Day Support (DS) Waiver

This waiver was originally developed in 2005 to serve the needs of individuals, along with their families, who has an intellectual disability and have been determined to require the level of care in an ICF/IID. This waiver was developed to address the overwhelming needs of this population of individuals in the Commonwealth, because the ID waiver operated at capacity and was not funded for the higher numbers of individuals who required the covered services. This waiver was intended to be temporary measure while the individuals on the waiting list waited for an opening in the ID waiver. The services covered in DS are: (i) day support; (ii) prevocational services, and; (iii) supported employment.

In SFY 2015, this waiver served 271 individuals/families with expenditures of: \$3,806,006. Acute care costs for these individuals totaled \$3,103,295.

ISSUES

The Commonwealth's three waivers have not been substantially updated in recent years. DMAS and DBHDS have undertaken this waiver redesign in consideration of recent federal policy

changes to ensure that Virginia's system of services and supports fully embraces community inclusion and full access for individuals who have disabilities. This redesign effort is important to:

Provide community-based services for individuals with significant medical and behavioral support needs;

Expand opportunities that promote smaller, more integrated independent living options with needed supports; and,

Enable providers to adapt their service provision and business model to support the values and expectations of the federally required community integration mandate.

Comply with Settlement Agreement elements requiring expansion of integrated residential/day services and employment options for persons with I/DD;

In Virginia, funding and payment for services are broadly related to individual support needs. DMAS has found that differing expenditures have become associated with people who have similar needs. Currently, an individual's level of need for resources and supports is often not correlated to waiver expenditures. Over time, DMAS and DBHDS expect that better correlating individuals' support levels with the costs of their needs will enable the Commonwealth to more precisely predict costs, thereby leading to improved budgeting, which is expected to enable serving more individuals within current appropriations.

RECOMMENDATIONS

DMAS and DBHDS recommend amending the three existing waivers into three distinct waivers that will support all individuals who are eligible and have a developmental disability by:

Integrating individuals with developmental disabilities into their communities by providing needed supports and resources

Standardizing and simplifying access to services

Offering services that promote community integration and engagement

Improving providers' capacities and quality by increasing reimbursements as quality improves and

Aligning this waiver redesign with recent research about supporting such individuals in smaller communities in order to achieve better outcomes.

Creating a single, statewide waiting list which DBHDS will maintain to replace current waiting lists. Individuals will be ranked by priority based on the degree of jeopardy to their health and safety due to their unpaid caregivers' circumstances. Individuals and family/caregivers will have appeal rights for the priority assignment process but not the actual slot allocation determination.

DMAS and DBHDS believe that these recommendations will enable the Commonwealth to meet its obligations under the community integration mandate of the ADA, the Supreme Court's *Olmstead* Decision, and the 2012 Settlement Agreement with the U.S. Department of Justice.

Family and Individual Supports (FIS) Waiver (formerly the DD Waiver)

This new waiver will continue to support individuals with disabilities who are living with their families, friends or in their own residences. It will support individuals who have some medical or behavioral needs and will be open to children and adults. The following services will be added: (i) shared living; (ii) supported living residential; (iii) community coaching; (iv) community engagement; (v) workplace assistance services; (vi) private duty nursing; (vii) crisis support services; (viii) community-based crisis supports; (ix) center-based crisis supports; (x) electronic home based supports.

Community Living Waiver (formerly the ID Waiver)

This new waiver will remain a comprehensive waiver that includes 24/7 residential support services for those who require this level of support. It will be open to children and adults with developmental disabilities who may require intense medical and/or behavioral supports. The following services will be added: (i) crisis support services; (ii) supported living residential; (iii) shared living; (iv) electronic home based support; (v) community engagement; (vi) community coaching; (vii) community guide (peer mentoring); (viii) community- based and center-based crisis supports; (ix) individual and family/caregiver training; (x) private duty nursing; and (xi) workplace assistance services.

Building Independence Waiver (formerly DS Waiver)

This new waiver will support adults (18 years of age and older) who are able to live in their communities and control their own living arrangements with minimal supports. The following services will be added: (i) assistive technology; (ii) community- and center-based crisis supports; (iii) environmental modifications; (iv) Personal Emergency Response Systems and electronic home based supports; (v) transition services; (vi) shared living; (vii) independent living supports; and; (viii) community engagement/ coaching (peer mentoring) services.

Currently provided prevocational services (defined as preparing an individual for paid/unpaid employment such as accepting supervision, attendance, task completion, problem solving, and safety) are recommended for discontinuation as part of this redesign action.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
12 VAC 30-50-440		Case management requirements for individuals with mental retardation.	REPEALING; being replaced with 12 VAC 30-50-455
12 VAC 30-50-450		Case management requirements for individuals with mental retardation and	REPEALING; being replaced with 12 VAC 30-50-455

		related conditions who participate in waiver.	
12 VAC 30-50-490		Case management requirements for individuals with developmental disabilities including autism.	REPEALING; being replaced with 12 VAC 30-50-455
	12 VAC 30-50-455		Case management for individuals with developmental disabilities (DD) target group; statewide coverage; comparability of services waived; definition of services; provider qualifications, provider access without restriction; non-duplication of payments.
12 VAC 30-50-360		Criteria for care in facilities for mentally retarded persons	Phrase linking this regulation to level of functioning for individuals in waiver programs is removed; remaining changes are technical corrections to update a longstanding regulation to Registrar's current formatting and labeling standards.
12 VAC 30-80-110		Payment rates established in 2013 for case management for individuals with developmental disabilities.	Updates to 2016 the date that rates were established for case management for individuals with developmental disabilities.
	12 VAC 30-120-500		Waiver eligibility standards and waiting list requirements. SIS requirements; levels of services; reimbursement tiers established.
	12 VAC 30-120-510		Definition of terms used in this part.
	12 VAC 30-120-514		Provider enrollment, requirements, and termination rules for all waivers.
	12 VAC 30-120-515		Competencies, provider documentation, evaluation of service need, utilization review rules for all waivers.
	12 VAC 30-120-520		Eligibility standards for individuals approved for the FIS, CL, and BI waivers; criteria for services; assessment and enrollment requirements.
	12 VAC 30-120-530		Level of functioning standards for waiver eligibility (VIDES)
	12 VAC 30-120-540		SIS requirements
	12 VAC 30-120-570		Tiers of reimbursement requirements.
	12 VAC 30-120-580		Waiting list priorities; assignment process.
12 VAC 30-120-700		Individual and Family Developmental Disabilities (DD) waiver. Definitions.	Family and Individual Supports (FIS) waiver definitions to be the same as CL waiver and BI waiver where terms overlap.
12 VAC 30-120-710		General coverage and requirements for this waiver; lists covered services in this waiver; eligibility criteria for emergency access to waiver; standard appeal provision.	General coverage and requirements for this waiver; lists new and existing covered services in this waiver; eligibility criteria for access to waiver has been moved to 12 VAC 30-120-500 et seq. regulations; standard appeal provisions.

12 VAC 30-120-720		Qualification and eligibility requirements; intake process	REPEALING; same provisions appear in 12 VAC 30-120-520.
12 VAC 30-120-730		General requirements for participating providers.	REPEALING; same text in 12 VAC 30-120-514 and 515.
	12 VAC 30-120-735		New section for policies for voluntary/ involuntary disenrollment of consumer-directed services. Individual enrolled in waiver to be given choice of agency to provide personal assistance, respite and companion services.
12 VAC 30-120-740		Participation standards for waiver participating providers.	REPEALING; same text in 12 VAC 30-120-514 and 515.
12 VAC 30-120-750		Covered services: in-home residential support; supported living residential; in-home support	In-home support services; supported living residential services to be the same as established in new CL waiver.
12 VAC 30-120-751		Covered services: shared living supports	Covered services: shared living supports to be the same as established in the new CL waiver.
12 VAC 30-120-752		Covered services: day support services	Covered services: day support services to be the same as established in the new CL waiver.
12 VAC 30-120-753		Covered services: prevocational services	REPEALING; service does not meet the current national standards which encourage individuals with disabilities to be gainfully employed.
12 VAC 30-120-754		Covered services: supported employment services and workplace assistance	Covered services: supported employment for individuals or groups and workplace assistance to be the same as established in the new CL waiver.
12 VAC 30-120-755		Covered services: benefits planning	RESERVED for 2017.
12 VAC 30-120-756		Covered services: therapeutic consultation	Covered services: therapeutic consultation to be the same as established in the new CL waiver.
12 VAC 30-120-758		Covered services: environmental modifications	Covered services: environmental modifications to be the same as established in the new CL waiver.
12 VAC 30-120-760		Covered services: skilled nursing and private duty nursing services	Covered services: skilled nursing services and adding private duty nursing services; both to be the same as established in the new CL waiver.
	12 VAC 30-120-761		Covered services: community engagement and coaching to be the same as established in the new CL waiver.
12 VAC 30-120-762		Covered services: assistive technology	Covered services: assistive technology to be the same as established in the new CL waiver.
12 VAC 30-120-764		Covered services: crisis supports; center-based crisis supports; community-based	Covered services: crisis supports; center-based crisis supports; community-based crisis supports to be the same as

		crisis supports	established in the new CL waiver.
12 VAC 30-120-766		Covered services: personal care and respite care	Covered services: personal care, respite care and companion services to be the same as established in the new CL waiver.
12 VAC 30-120-770		Covered services: services facilitation consumer-directed model of service delivery	Covered services: services facilitation to be the same as established in the new CL waiver.
	12 VAC 30-120-773		Covered services: electronic home-based supports to be the same as established in the new CL waiver.
12 VAC 30-120-774		Covered services: personal emergency response system (PERS)	Covered services: PERS to be the same as established in the new CL waiver.
	12 VAC 30-120-775		Covered services: transition services to be the same as established in the new CL waiver.
12 VAC 30-120-776		Covered services: companion services	REPEALING: A new section (777) is created to replace 776.
	12 VAC 30-120-777		Covered services: companion services (both agency and consumer-directed) to be the same as established in the new CL waiver.
	12 VAC 30-120-778		RESERVED: non-medical transportation for 2017.
	12 VAC 30-120-782	Payment for services	Section to be the same as established in the new CL waiver.
12 VAC 30-120-1000		Existing ID waiver definitions.	Waiver definitions for CL waiver to be same as for FIS and BI waivers where terms overlap.
12 VAC 30-120-1005		ID waiver: waiver description and legal authority.	CL waiver description and legal authority updated and unnecessary text removed.
12 VAC 30-120-1010		ID waiver: individual eligibility requirements	REPEALING: individual eligibility requirements moved to 12 VAC 30-120-500 et seq.
	12 VAC 30-120-1019		Covered services: services facilitation.
12 VAC 30-120-1020		ID waiver: limits on covered services	CL waiver limits on covered services expanded to add new services to existing services; remainder of existing text stricken to move all services into separate sections.
	12 VAC 30-120-1021		CL waiver limits on covered services: assistive technology and benefits planning
	12 VAC 30-120-1022		CL waiver limits on covered services: community engagement, coaching
	12 VAC 30-120-1023		CL waiver limits on covered services: companion services (agency-directed and consumer-directed)
	12 VAC 30-120-1024		CL waiver limits on covered services: crisis support services; center-based crisis supports; community-based crisis

			supports.
	12 VAC 30-120-1025		CL waiver limits on covered services: electronic home-based supports; environmental modifications.
	12 VAC 30-120-1026		CL waiver limits on covered services: group day services (center-based; community-based)
	12 VAC 30-120-1027		CL waiver limits on covered services: group home residential.
	12 VAC 30-120-1028		CL waiver limits on covered services: individual and family/caregiver training; in-home support.
	12 VAC 30-120-1029		CL waiver limits on covered services: personal assistance services (agency-directed and consumer-directed).
12 VAC 30-120-1030		This section was reserved.	CL waiver limits on covered services: personal emergency response system.
	12 VAC 30-120-1032		CL waiver limits on covered services: respite services (agency-directed and consumer-directed).
	12 VAC 30-120-1033		CL waiver limits on covered services: services facilitation; consumer-directed model
	12 VAC 30-120-1034		CL waiver limits on covered services: shared living
	12 VAC 30-120-1035		CL waiver limits on covered services: supported employment.
	12 VAC 30-120-1036		CL waiver limits on covered services: supported living residential; sponsored residential.
	12 VAC 30-120-1037		CL waiver limits on covered services: therapeutic consultation.
	12 VAC 30-120-1038		CL waiver limits on covered services: transition services.
	12 VAC 30-120-1039		CL waiver limits on covered services: workplace assistance.
12 VAC 30-120-1040		General requirements for participating providers.	REPEALING: covered in 12 VAC 30-120-514 and 515.
	12 VAC 30-120-1059		Provider requirements: services facilitation.
12 VAC 30-120-1060		ID waiver participation standards for provision of services; providers requirements	REPEALING: covered in 12 VAC 30-120-514 and 515.
	12 VAC 30-120-1061		Provider requirements for AT, EHBS, EM, PERS
	12 VAC 30-120-1062		Provider requirements for companion, personal assistance, respite services
	12 VAC 30-120-1063		Prov req'ts for crisis sup serv (crisis stabiliz); center-based crisis sup; community-based crisis sup
	12 VAC 30-120-1064		Prov req's for day sup serv; group home resid; independ liv sup; sponsored

			residential; sup'd living residential
	12 VAC 30-120-1065		Prov req's for comm'y engagem't; comm'y coaching
	12 VAC 30-120-1066		Prov req's for supported employment (ind & group); workplace assistance
	12 VAC 30-120-1067		Provider req's for skilled nursing and private duty nursing.
	12 VAC 30-120-1068		Provider req's for benefits planning; non-med transport; therapeutic consult; transition services
	12 VAC 30-120-1069		Provider requirements for shared living supports.
12 VAC 30-120-1070		ID waiver: payment for services	Updated to reflect new waiver components.
12 VAC 30-120-1080		ID waiver: utilization review; level of care reviews	REPEALING: covered in 12 VAC 30-120-514 and 515.
12 VAC 30-120-1088		ID waiver: waiver waiting list	REPEALING: covered in 12 VAC 30-120-500 et seq.
12 VAC 30-120-1090		ID waiver: appeals.	Updated terminology.
12 VAC 30-120-1500		Day support waiver: definitions	BI waiver: definitions to be the same as the FIS and CL waivers where terms overlap
12 VAC 30-120-1510		Day support waiver: general coverage and requirements.	BI waiver: general coverage and requirements.
12 VAC 30-120-1520		Day support waiver: individual eligibility requirements	BI waiver: language moved to 12 VAC 30-120-500 et seq. for consistency across all 3 waivers
12 VAC 30-120-1530		Day support waiver: general requirements for waiver providers	REPEALING: covered in 12 VAC 30-120-514 and 515.
12 VAC 30-120-1540		Day support waiver: participation standards for waiver providers	BI waiver: participation standards for waiver providers are updated with current agency names, form numbers.
12 VAC 30-120-1550		Day support waiver: services day support, prevocational and supported employment	REPEALING: new services are set out in following sections
	12 VAC 30-120-1552		BI waiver: covered services; service descriptions.
	12 VAC 30-120-1554		BI waiver: criteria for covered services.
	12 VAC 30-120-1556		BI waiver: types of activities required for covered services
	12 VAC 30-120-1558		BI waiver: units and limits for covered services.
	12 VAC 30-120-1560		BI waiver: service-specific provider requirements
12 VAC 30-120-1580			BI waiver: payments for services

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The viable alternatives to the current proposed regulatory actions were collaboratively devised between DMAS, DBHDS, advocates, and the Department of Justice. The current approach to restructuring and redesigning three separate waiver programs related to developmental disabilities affects the covered services and service definitions and limitations, as well as provider qualifications but not individuals' eligibility requirements. Revising the existing waiver programs and adding new services are expected to better meet the needs of individuals who are currently institutionalized and awaiting transfer to their communities as well as those needs of the individuals already living in communities.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include 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 meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including and not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

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 Ann Bevan, DOJ Settlement Senior Advisor, DMAS, 600 East Broad St., Suite 1300, Richmond, VA 23219; Ann.Bevan@dmass.virginia.gov; (804) 588-4887; (804) 786-1680 fax]. 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.

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 discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. They do not strengthen or erode the marital commitment, and are not likely to decrease disposable family income. These revised services may encourage some economic self-sufficiency and the assumption of more responsibility by the individuals who will be served by these improved waiver programs.