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## Fast Track Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Department of Medical Assistance Services   |
| <b>Virginia Administrative Code (VAC) citation</b> | 12 VAC 30-120   |
| <b>Regulation title</b>                            | Waivered Services   |
| <b>Action title</b>                                | Transitional funding for AIDS Waiver, IFDDS Waiver, MR Waiver, and Technology Assisted Waiver |
| <b>Document preparation date</b>                   |   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This proposed new program provides limited supplemental financial assistance to Medicaid recipients who are moving from an institutional setting, such as a nursing facility, back into the community. Medicaid recipients moving back into the community face many one-time costs, such as new rental housing or utility deposits, which make it difficult for them to transition back into the community. This regulatory action permits DMAS to provide transition funding to assist individuals returning to the community with the costs incurred as part of transition to a home or apartment in the community.

### 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 Agency Background Document with the attached amended non-State Plan regulations -- Waivered Services: Transitional funding for AIDS Waiver, IFDDS Waiver, MR Waiver, and Technology Assisted Waiver (12 VAC 30-120-70 and 30-120-90, 12 VAC 30-120-140 and 30-120-201, 12 VAC 30-120-211 and 30-120-249, 12 VAC 30-120-700 and 30-120-776) and adopt the action stated therein. I certify that this final regulatory action has completed

all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act and is full, true, and correctly dated.

\_\_\_\_\_

Date

\_\_\_\_\_

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The Code of Virginia § 32.1-325 grants to the Board of Medical Assistance (BMAS) the authority to administer and amend the Plan of Medical Assistance. The Code of Virginia § 32.2-324 grants to the Director of DMAS the authority to administer and amend the Plan of Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code of Virginia also provides, in the Administrative Process Act (APA) § 2.2-4012.1, for this agency's promulgation of fast track regulations subject to the Governor's review.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

This action modifies the AIDS Waiver, Individual and Family Developmental Disabilities Support (IFDDS) Waiver, the Mental Retardation (MR) Waiver, and Technology Assisted Waiver to provide transition funding to allow individuals to return to their home communities from institutions. Individuals seeking a return to the community from institutions are faced with many one-time expenses and, without some form of financial aid, may not be able to transition to the community.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-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 (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 with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

This action will allow individuals to return to their home communities from institutions. These regulatory changes were shared with providers and advocates, who had no substantive comments about the changes and supported the addition of transition funding. The agency is using the fast-track process in

order to complete the needed regulatory changes as soon as possible so as to aid individuals with transition to the community from institutions.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

The definition and covered services sections of the AIDS Waiver, IFDDS Waiver, MR Waiver, and Technology Assisted Waiver of the State Plan for Medical Assistance Services will be affected by this action.

Medicaid home and community-based (HCBS) waivers are the statutory alternative to institutional care. Many states, including Virginia, have found in HCBS waivers a cost effective means to implement a comprehensive plan to provide services in the most integrated setting appropriate to the needs of individuals with disabilities. However, individuals seeking a return to the community from institutions are faced with many one-time expenses and, without some form of financial aid, may not be able to transition to the community.

A Centers for Medicare & Medicaid Services (CMS) policy memo, dated May 9, 2002, indicates that states may secure federal matching funds under HCBS waivers for one-time, set-up expenses for individuals who make the transition from an institution to their own home or apartment in the community. The memo outlines transition expenses to include security deposits, essential furnishings, moving costs, utility service access fees and one-time cleaning expenses prior to occupancy as being eligible for Medicaid waiver coverage. DMAS may only include those institutions as defined by federal regulations at 42 CFR 435.1009 to include an intermediate care facility for the mentally retarded (ICF/MR), a nursing facility, or a specialized care facility/hospital. Transition funding would not apply to an acute care admission to a hospital.

By this action DMAS is amending the AIDS Waiver, the IFDDS Waiver, the MR Waiver, and the Technology Assisted Waiver to include a \$4,000 per-person lifetime limit on coverage for individuals transitioning from a nursing facility, ICF/MR, or specialized care facility back to their communities. Allowable costs include 1) security deposits that are required to obtain a lease on an apartment or home; 2) essential furnishings (bed, chair, dining table and chairs, eating utensils, food preparation items, telephone) and moving expenses required to occupy and use a community domicile; 3) set-up fees or deposits for utility or service access (e.g. telephone, electricity, heating); 4) health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy; 5) fees to obtain a copy of a birth certification or an identification card or driver's license.

The expenses must be reasonable and may not include recreational or diversional items or expenses related to on-going rent or housing costs, food, or clothing expenses. This does not include services or items that are covered under other waiver services such as chore, homemaker, home modifications and adaptations, or supplies and equipment.

With the implementation of this regulatory change, individuals seeking a return to the community from institutions will be able to cover one-time expenses incurred as a result of setting up a new residence. The regulatory change is in keeping with the federal Olmstead Act, which promotes the notion that individuals, of all ages and with any disabilities, have the right to live in the most integrated setting possible that can meet their needs.

**Issues**

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

The primary advantage is to allow individuals to return to their home communities from institutions. They will be supported to live in a less-restrictive environment experiencing an enhanced quality of life and increased self-sufficiency. The primary advantage for the Commonwealth is to promote the implementation of the Olmstead Act by assisting individuals with transitioning to the community, while potentially decreasing Medicaid expenditures on average for less expensive treatment through community waivers. There are no disadvantages to the public or the Commonwealth.

**Economic impact**

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| <p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>  | <p>\$550,000 General Fund<br/>\$550,000 Non General Fund<br/>These amounts will be annual expenditures to make transition funding a permanent service under the waivers. A portion of this funding will also be made available to individuals enrolled in the Elderly and Disabled with Consumer Direction (EDCD) Waiver.</p>   |
| <p><b>Projected cost of the regulation on localities</b></p>   | <p>There is no projected cost of the regulations on localities.</p>   |
| <p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>   | <p>Affected individuals will be those moving from institutions to the community. Public and private providers will incur decreased costs in paying transition costs for individuals.</p>  |
| <p><b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>There are approximately 263 individuals residing in facilities that would benefit from one-time transition funding. It is estimated that no more than two hundred sixty-three small providers (one provider per individual transitioning to the community) are likely to incur less cost related to serving individuals moving out of institutions. A significant number out of these 263 individuals will transition into the community under the EDCCD Waiver.</p> |
| <p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>  | <p>None</p>   |

**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.*

There are no other alternatives that DMAS has considered, in response to the need for transition funding. Without transition funding, individuals will have difficulty moving into the community from institutions.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

This regulatory action will not have any negative effects on individuals or their families. It will not increase nor decrease an individual's or family's income. It will not discourage economic self-sufficiency, self-pride, or the assumption of individuals' or families' responsibilities.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

| <b>Current section number</b>                          | <b>Proposed new section number, if applicable</b> | <b>Current requirement</b>  | <b>Proposed change and rationale</b>                                |
|--|---|---|---|
| 12VAC30-120-70, 30-120-140, 30-120-211, and 30-120-700 |   | Definition sections for the Technology Assisted Waiver, the AIDS Waiver, the MR Waiver and the IFDDS Waiver, respectively | Add definition of "Transitional funding" to each definition section |
| 12VAC30-120-90, 30-120-201, 30-120-249, and 30-120-776 |   | Sections describing the services available under each waiver program  | New language added to each section describing Transitional funding. |