



Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-120
Regulation title	Waivered services
Action title	Money Follows the Person Program Changes
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Department of Medical Assistance Services received approval of Virginia's Money Follows the Person (MFP) Demonstration application from the Centers for Medicare and Medicaid Services (CMS). The Demonstration's vision is to create a system of long-term services and supports that enables available funds to "follow the person" by supporting individuals who choose to transition from long-term care institutions into the community.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. Item 302, HHH of the 2008 Appropriation Act states:

Contingent upon approval by the Centers for Medicare and Medicaid Services as part of the Money Follows the Person demonstration grant, the Department of Medical Assistance Services shall seek federal approval for necessary changes to home and community-based 1915(c) waivers to allow individuals transitioning from institutions to receive care in the community.

DMAS previously promulgated an emergency regulation, and this proposed regulatory action follows.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This regulation is required in order to establish the regulatory structure for the successful implementation of the Money Follows the Person (MFP) Demonstration. This regulation must be promulgated and the regulations must be in effect in order to receive CMS approval to begin the MFP demonstration in July 2008.

The purpose of the MFP demonstration is to strengthen Virginia’s long-term services and supports using available funds to “follow the person” by supporting individuals who choose to transition from long-term care institutions into the community. The MFP demonstration is one of the Governor’s set priorities for community integration of persons who reside in institutions. This initiative also reflects a strong collaborative approach with this Administration and the Legislature to coordinate and continually build upon rebalancing efforts of the Commonwealth’s long-term support system (i.e., increasing the use of home- and community-based care services (HCBS) rather than institutional long-term care services). This collaborative approach has enabled the Commonwealth over the past several years to be resourceful in balancing the state’s budget without cutting Medicaid long-term support services.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

These proposed regulations reflect the needed changes to the following five HCBS waivers to support individuals who choose to transition from long-term care institutions into the community. They are the Technology Assisted (Tech), HIV/AIDS, Elderly or Disabled with

Consumer Direction (EDCD), Mental Retardation (MR) and Individual and Family Developmental Disabilities Support (IFDDS) Waivers.

The changes to these five waivers include: 1) adding the services of Personal Emergency Response System (PERS), Medication Monitoring, and Transition Services to the Tech Waiver; 2) adding the services of Transition Coordination, Environmental Modifications (for MFP participants only), Assistive Technology (for MFP participants only), and Transition Services to the EDCD Waiver; 3) adding the services of PERS and Medication Monitoring, Environmental Modifications (for MFP participants only), Assistive Technology (for MFP participants only), Transition Services to the HIV/AIDS Waiver; and 4) adding Transition Services to the MR and IFDDS Waivers.

Two of these services, Transition Coordination and Transition Services, are new waiver services. Language has been developed based on CMS guidelines and a review of how other states define and utilize these services. In addition, existing waiver services (PERS, Medication Monitoring, Environmental Modifications and Assistive Technology) are being expanded to other waivers in an effort to facilitate the transition from institutional living to community living. The new services mentioned above are being added as follows: Transition Services is being added to the AIDS, EDCD, IFDDS, MR and Tech Waivers to provide one-time funding (up to \$5,000 per person, per lifetime) to assist with costs incurred by individuals who are transitioning into the community. Examples of expenses include rent and utility deposits and necessary furniture. One other service, Transition Coordination, is added to the EDCD Waiver to assist institutionalized transitioning into the EDCD Waiver because a case management service currently does not exist in this program. This service will be time-limited and in accordance with the timeframe specified by federal law, prior to the discharge date, during and after transition; the coordination of community-based services with the case manager if case management is available; linkage to services needed prior to transition such as housing, peer counseling, budget management training, and transportation; and the provision of ongoing support for up to 12 months after discharge date. All other HCBS waivers already have a case management service that can assist institutionalized individuals with transitioning into these programs.

Finally, this regulation addresses changes to units of service for provider billing purposes. DMAS is currently being directed by the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS), to no longer use preset units of service for Medicaid Waiver reimbursement. DMAS is working with CMS to establish time-based billing for the DMAS fee schedule for Waiver services, and this is reflected in the MFP regulations.

Please Note: In the July 1, 2008 emergency regulation, enrollees in the AIDS waiver and the EDCD waiver were given access to assistive technology and environmental modification services without regard to whether the enrollee was part of the Money Follows the Person demonstration program. This proposed regulation makes a change in these services for these two populations. The extension of these services to all EDCD and AIDS waiver participants has led to costs in excess of the cost-savings generated through the MFP demonstration program. Due to the current budget crisis in the Commonwealth of Virginia, the Governor requested DMAS to provide areas of various program services that could be reduced or discontinued in order to provide needed savings in the DMAS budget.

In response to the Governor's budget reduction directive, DMAS is continuing access to these two services only for those AIDS and EDCD waiver enrollees who are also MFP participants. The Agency responded to the Governor's directive by limiting access to the two new services

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of these proposed regulations is that they allow greater support and services for individuals who choose to transition from long-term care institutions into the community. These proposed changes will improve the infrastructure for community-based long-term support services by adding new services to five of the HCBS waiver program.

This Demonstration will support Virginia's implementation of the *Olmstead* decision and will complement the efforts of the recently awarded Systems Transformation Grant that aims to improve the infrastructure for community-based long-term support services.

There are no disadvantages to the public or the Commonwealth.

This proposed regulatory action will have a positive impact on families in that individuals who are currently residing in an institution will have the option of transferring to the community and have the opportunity to live in a more family-like environment in their community.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

None of the requirements are more restrictive than associated federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

DMAS has already extensively involved the public in the development of this regulation, but will continue to seek comments on this action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. DMAS is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Jason Rachel, Policy & Research Division, 600 E. Broad St, Suite 1300, Richmond, VA 23219. Jason’s phone number is 804-225-2984, and his fax is 804-786-1680. His e-mail address is: Jason.Rachel@dmass.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period. Public meetings have been held; any additional meetings will be available in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</p>	<p>The costs of the Demonstration Project for the next two state fiscal years is as follows:</p> <p>For state fiscal year '08 the cost is \$418,821 in State General Funds (GF), with an enhanced Federal Medicaid Match of \$602,617.</p> <p>For state fiscal year '09 the cost is \$3,113,261 in State General Funds (GF), with an enhanced Federal Medicaid Match of \$4,123,638.</p>
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	<p>For state fiscal year '10 the cost is \$3,121,855 in State General Funds (GF), with an enhanced Federal Medicaid Match of \$4,132,232.</p> <p>The anticipated state GF does not take into account the anticipated savings that will result from individuals transitioning from institutions into the community. These savings are as follows:</p> <p>For state fiscal year '08 the savings amount to \$65,232 in General Funds (GF). For state fiscal year '09 the savings amount to \$3,243,413 in General Funds (GF). For state fiscal year '10 the savings amount to \$3,426,175 in General Funds (GF).</p> <p>The Centers for Medicare and Medicaid Services expects that any cost savings realized through the Demonstration will be placed back into the long-term care system to continue the Commonwealth's rebalancing efforts.</p> <p>\$229,873 of GF needed in State Fiscal Year 2008 will be one-time administrative (information technology) expenses to launch the MFP Demonstration. Ongoing administrative expenses for the Demonstration are expected to be \$968,213 GF for state fiscal year 2009 and \$976,807 for '10.</p> <p>This Demonstration enables Virginia to receive an enhanced match of 75% for home and community-based service expenditures for 12 months for each qualified person who transitions into the community.</p>
<p>Projected cost of the regulation on localities</p>	<p>There is no projected additional cost to localities related to the implementation of the MFP Demonstration.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Individuals who receive HCBS Waiver services and the providers that offer HCBS waiver services will be affected by this regulation.</p>
<p>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. 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>It is anticipated this regulatory package will affect 1,041 recipients who are anticipated to transition in the MFP demonstration and 2,500 service providers will be affected. Of these providers, 400 are predicted to be small businesses. The addition of new services and expansion of existing services will help generate new revenue for small businesses and all providers involved.</p>

<p>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.</p>	<p>The total projected cost for the MFP demonstration is \$6,653,937 for state fiscal years '08 through '10. This includes administrative expenses for operating the Demonstration as well as expenses for adding new services to existing HCBS waiver programs.</p>
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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 alternatives to both meeting the CMS requirements for the MFP demonstration and meeting the necessary budget reductions. If these regulatory changes are not made, CMS will not continue to approve Virginia’s MFP demonstration program that began in July 2008.

DMAS initially sought to combine the MFP changes with a consolidation of the Waiver program regulations. Based upon public input DMAS received regarding this approach, the Agency decided to move forward with the MFP as a freestanding regulatory package, and initiate the Waiver program regulatory consolidation at a later time. In addition, the Agency is still in the process of sorting out the logistics of another new service, Consumer-Directed Supported Employment. Initially DMAS intended to include this service as part of the regulation, but due to concerns about the employment classification and tax status of consumer-directed supported employment workers, the Agency is delaying the implementation of this new service pending resolution of several outstanding issues on this question.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small businesses. The language amendments for the MFP Demonstration follow CMS requirements for program participation.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

DMAS’ Notice of Intended Regulatory Action was published in the (7/21/2008) Virginia Register (Volume 24: Number 23) for its public comment period from 7/21/2008 to 8/20/2008. No comments were received.

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; or 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. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-70.		Definitions (Tech Waiver)	Adds definitions for “Assistive Technology” and “Transition Services” and adds clarifying language to several other definitions.
12VAC30-120-90.		Covered services and provider requirements	Adds descriptive language for Assistive Technology, Environmental Modifications and Transition Services.

12VAC30-120-140.		Definitions (AIDS Waiver)	Adds descriptive language for Assistive Technology, PERS, Environmental Modifications, Transition Coordinator and Transition Services. This proposed regulation limits these services to those participating in the MFP program.
12VAC30-120-211		Definitions (MR Waiver)	Adds descriptive language for “Job Coach”, updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD). Adds definition for “Transition Services” and adds clarifying language to several other definitions.
12VAC30-120-213.		General coverage and requirements for MR waiver services.	Adds definitions for Transition Services and adds clarifying language to several other definitions.
12VAC30-120-225.		Consumer-directed model of service delivery	Adds clarifying language regarding supported employment and consumer direction.
12VAC30-120-229.		Day support services	Addresses changes to service units.
12VAC30-120-237.		Prevocational services	Addresses changes to service units.
12VAC30-120-247.		Supported employment services	Addresses changes to service units and clarifications regarding Job Coach services.
12VAC30-120-700.		Definitions (DD Waiver)	Adds clarifying language regarding Job Coach and Transition Services; updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD).
12VAC30-120-710.		General coverage and requirements for all home and community-based waiver services.	Updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD),

			and adds clarifying language regarding consumer-direction and Transitional Services.
12VAC30-120-754		Supported employment services	Adds clarifying language regarding changes to service units.
12VAC30-120-758		Environmental modifications	Adds clarifying language regarding this service. This proposed regulation limits these services to those participating in the MFP program.
12VAC30-120-762.		Assistive technology	Adds clarifying language regarding this service. This proposed regulation limits these services to those participating in the MFP program.
12VAC30-120-770		Consumer-directed model of service delivery	Discusses the requirements and standards for consumer-directed services.
12VAC30-120-900		Definitions (EDCD Waiver)	Adds clarifying language regarding Assistive technology, Environmental Modifications, Transitional Coordinator and Transition Services. This proposed regulation limits these services to those participating in the MFP program.
12VAC30-120-910.		General coverage and requirements for EDCCD services.	Adds clarifying language regarding Assistive technology, Environmental Modifications, Transitional Coordinator and Transition Services. This proposed regulation limits these services to those participating in the MFP program.
12VAC30-120-920.		Individual eligibility requirements	Removed the restriction that EDCCD Waiver enrollees cannot live in Adult Foster Care settings in order to permit individuals living in this setting to receive EDCCD waiver services; amended the restrictions on Assisted Living Facilities (ALFs) to permit individuals living in ALFs that house four individuals.

12VAC30-120-970		Personal Emergency Response System (PERS).	Updates VAC references and adds clarifying language regarding case managers.
12VAC30-120-1500		Definitions (MR Day Support Waiver)	Adds clarifying language regarding Consumer-directed model and Consumer-directed facilitator services, and updates references to AAMR.
12VAC30-120-1550		Day Support Services	Services: Day Support Services, prevocational services and supported employment services: describes the criteria and coverage for these services.
N/A	12VAC30-120-2000.		New Section: Transition coordinator; defines and describes requirements for receiving this service.
N/A	12-VAC30-120-2010		New Section: Transition services; defines and describes requirements for receiving this service.