



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-120
Regulation title	Omnibus Waiver Regulation
Action title	Regulation to consolidate the Department's seven waiver programs into one regulation.
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*.

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.

This proposed regulatory action will consolidate seven groups of regulatory subchapters found in 12 VAC 30-120 (Waivered services). Each of these seven sets of subchapters address different home- and-community-based long-term care Medicaid waiver programs. These waiver program regulations evolved separately over time, as each new waiver program was implemented by DMAS, each with its own set of regulations. While each program addresses the unique needs of separate populations, the programs share many common regulatory elements, such as definitions, provider regulations and service descriptions. Despite the obvious similarities, each program has its own set of regulations, many of which address issues common to all waiver programs. As a result of this evolution, DMAS now has seven sets of waiver regulations with significant redundancy, as well as some inconsistencies; this has made these regulations cumbersome and at times confusing to both waiver services providers and waiver program enrollees.

This action shall consolidate all seven waiver sets of regulatory subchapters in 12 VAC 30-120 to the extent possible, and break out separate regulatory subchapters for each of the waiver programs to address those unique elements of each program, such as some definitions, service descriptions or eligibility requirements, that are distinct from the other waiver programs. DMAS intends to fully involve advocates and the affected members of the public to ensure that the resulting 12 VAC 30-120 is more user-friendly and succinct, while maintaining the separate and

distinct character of each set of waiver program regulations. In doing so the Agency's goal is to foster greater efficiency without sacrificing any program integrity among the waivers.

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., 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.

Need

Please detail 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.

The agency has determined that the proposed regulatory action will assist waiver recipients, providers, and stakeholders in understanding the requirements of, and services offered within, the existing waiver programs. The current waiver program regulations consist of seven separate regulatory subchapters that contain inconsistencies across definitions and program requirements, and that are repetitive in describing issues that relate to all waivers, including, and not limited to:

- Medicaid eligibility criteria
- Provider requirements that are applicable to all providers
- Documentation requirements
- Covered services descriptions
- Quality management reviews

Several stakeholders, including those representing the intellectual disability community, have expressed concern that the proposed consolidation will diminish the uniqueness of the individual waivers. The agency is committed to involving stakeholders in the regulatory process to ensure that individual program integrity is maintained.

In addition to the input from stakeholders, in mid-December of 2007, the Attorney General's Regulatory Reform Task Force recommended that the Agency consolidate the waiver regulations to the extent possible in order to eliminate redundancy and inconsistencies. This package shall move that process forward.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Regulatory sections of Virginia's seven long-term care home- and community-based services (HCBS) waiver programs that are similar are planned to be consolidated for program consistency, to remove repetitive language, and to provide enhanced understanding by waiver services providers, recipients, and other stakeholders. Currently, all seven HCBS waiver programs have separate sections in the waiver section of DMAS regulations at 12VAC30-120, and it is cumbersome for interested parties to monitor and provides the potential for inconsistencies among HCBS programs.

There are sections in each set of HCBS waiver regulations that are similar and "generic" across waivers. These sections include individual eligibility requirements, provider reimbursement, quality management review (formerly known as "utilization review"), and changes to or termination of services. These regulatory sections will be consolidated to eliminate repetition within each of the seven HCBS waiver programs. Where a difference must be noted to maintain program integrity within a specific waiver, it will be addressed in the proposed language as pertaining to a specific waiver.

A major issue of concern has been the inconsistency among waiver regulations regarding definitions (e.g., "service plan" vs. "plan of care" and "personal aide" vs. "personal attendant" vs. "personal care provider.") While often meaning the same thing, it is confusing to recipients and providers alike to have nomenclature vary among the waivers. This regulatory action will attempt to make these terms more consistent, except in cases where there is reasonable cause to maintain the difference.

Three waiver services (Assistive Technology, Environmental Modifications, and Personal Emergency Response System) are currently offered under some waivers and are being expanded to others in order to strengthen the HCBS waiver programs infrastructure to better support individuals transitioning into the community under the Money Follows the Person (MFP) Demonstration. Two new services were added to the HCBS Waiver programs as a result of the MFP Demonstration Grant. The regulations for MFP will be finalized before the proposed Omnibus Waiver regulation is issued and will be incorporated into this proposed action.

A generic framework will be established in the Omnibus Waiver regulation so that subsequent waiver regulatory amendments will be easily recognized. In addition, the DMAS waiver policy manuals related to HCBS waivers will be simplified and streamlined for ease of reference by recipients, providers, and stakeholders to reflect changes in regulations. Throughout this process, interested persons and organizations shall be involved.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There has been discussion to maintain the seven current waiver regulations as separate regulations. However, the duplication of generic requirements as well as inconsistency of language across waivers results in confusion and in some instances, contradiction. Having one waiver regulation would facilitate understanding of the services and requirements for recipients, providers, and stakeholders for the operation of the HCBS waiver programs and make future regulatory revisions much easier to accomplish.

Public participation

Please indicate 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 hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory 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. 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: 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 may do so by mail, email or fax to Brian McCormick, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219; telephone: 804-371-8856; fax: (804) 786-1680; and e-mail to brian.mccormick@dmas.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. A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using the participatory approach in the development of the proposed regulation. The waiver regulations cross numerous and varied recipient, provider, and stakeholder groups, and the Department invites their input on this proposal. In response to concerns that the regulations will be too generic, the Department wishes to express its assurance that all concerns will be addressed thoughtfully and carefully, and that areas in the regulations that are specific to one service group will continue to be treated as a separate section. The intention is to combine areas that can be easily combined and maintain separate sections where they are necessary. This process will be considerate of individual services and maintain their integrity.

Family impact

Assess the potential 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.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will strengthen the authority and rights of parents in determining the most appropriate care for their child; it will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, or one's children; nor will it strengthen or erode the marital commitment.