



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -120-910
Regulation title	Waivered Services
Action title	Remove 21 Hour Personal Care Requirement for EDCD Waiver Enrollees Receiving Hospice Services
Final agency action date	
Document preparation date	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The state regulation that is affected by this action is General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services (12 VAC 30-120-910).

Virginia Medicaid covers many individuals whose level of medical need requires them to be placed in institutions such as nursing facilities or Intermediate Care Facilities for the Mentally Retarded. DMAS offers a number of home and community based waiver programs that permit individuals whose level of medical care requires institutionalization to remain in the home and receive all medically necessary services to address their needs. The Elderly or Disabled with Consumer Direction Waiver (EDCD) is one of the home care programs offered by DMAS. One of the unique aspects of the EDCD program is the availability of personal care services in the home through this waiver. Currently, individuals enrolled in EDCD who also receive hospice services may access personal care waiver services on a weekly basis, but only after the hospice

care provider has provided 21 hours of personal care services through hospice. This requirement is reflected in 12 VAC 30-120-910(B)(3), which states:

Services under this waiver will not be available to hospice recipients unless the hospice can document the provision of at least 21 hours per week of homemaker/home health aide services and that the recipient needs personal care-type services that exceed this amount.

Medicare, the federal health care program for the elderly, had a similar requirement for hospice services, however in 2008 the federal Centers for Medicare and Medicaid Services (CMS) removed this Medicare requirement for hospice provided personal care services. While Medicare requirements are not necessarily prescriptive for the Medicaid program, Virginia Medicaid follows the Medicare hospice rules much more closely than the Medicare rules regarding other health care services. The General Assembly has now required DMAS to remove this requirement for individuals in the EDCD waiver who receive hospice services. Item 306 RRR of the 2009 Appropriations Act sets forth this change as follows:

RRR. The Department of Medical Assistance Services shall conform its requirements for hospice provided personal care to federal requirements for Medicare Conditions of Participation for beneficiaries participating in the Elderly or Disabled with Consumer Direction Waiver program. The department shall have the authority to implement this regulatory change effective July 1, 2009 and prior to the completion of any regulatory process undertaken in order to effect such change."

The following explanation was provided by the General Assembly for this mandate:

Federal hospice guidelines require that Medicaid personal care benefits may be used to the extent that the hospice would routinely use the services of a hospice patient's family in implementing a patient's plan of care. Therefore, the current regulatory language requiring hospices to provide 21 hours of care per week regardless of the assessed needs of the hospice patient is in direct conflict with the federal guidelines for a newly enacted standard in the Medicare Conditions of Participation for Hospices.

DMAS is therefore promulgating this regulatory change in order to implement this General Assembly mandate. The mandate requires the removal of the 21 hour limitation noted above in the regulation; it is very specific, so the only action being taken is the strike-through of the text in 12 VAC 30-120-910(B)(3) that contains the limitation. The specificity of 306 RRR removes any discretion DMAS may have in implementing this change, therefore DMAS is submitting this action as a final exempt regulatory change pursuant to Code of Virginia 2.2-4006(A)(4)(a), which exempts from the Administrative Process Act regulations that are, "[n]ecessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved."

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 Regulatory Review Summary with the attached regulations: General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services (12 VAC 30-120-910), 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, of the Administrative Process Act.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

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.