



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-120 and 30-135
Regulation title	Home and Community Based Waiver Programs and Demonstration Waiver Programs
Action title	2011 Budget Changes for Respite Services and Personal Care 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 regulations affected by this action are Waiver Programs (for home and community based programs (section 1915(c) of the *Social Security Act*)) (12 VAC 30-120-90, 120-165, 120-180, 120-190, 120-225, 120-233, 120-766, 120-950, 120-960, and 120-980) and Demonstration Waiver programs (for the Children's Mental Health waiver) (12 VAC 30-135-200 and 135-220).

The home and community based care waivers that are affected by these changes are: the HIV-AIDS (12 VAC 30-120-165, 120-180, and 120-190), Mental Retardation/Intellectual Disability (12 VAC 30-120-225 and 120-233), Individual and Families with Developmental Disabilities Supports (12 VAC 30-120-766), Elderly and Disabled with Consumer Direction (12 VAC 30-120-950, 120-960, and 120-980). The demonstration waiver that is affected by these changes is: Children's Mental Health waiver (12 VAC 30-135-200 and 135-220). All of the aforementioned

home and community based waivers are currently providing 720 hours of respite services and personal care services limited only by individual medical necessity. The Children's Mental Health waiver currently provides 720 hours of respite services but does not cover personal care services.

The 2011 session of the Virginia General Assembly mandated that DMAS impose new limits for waiver programs' respite services and personal care services. The mandates from the Appropriations Act are as follows:

“WW. The Department of Medical Assistance Services shall amend the 1915(c) home-and-community based waivers and the Children's Mental Health demonstration grant to decrease the annual respite care hours from 720 to 480. The 1915(c) waivers shall include the Alzheimer's Assisted Living, Day Support, Elderly or Disabled with Consumer Direction, Individual and Family Developmental Disabilities Support, Intellectual Disabilities, Technology Assisted, and HIV/AIDS Waivers. The department shall implement this change effective July 1, 2011, and prior to the completion of any regulatory process undertaken in order to effect such change.”

“CCCC. The Department of Medical Assistance Services shall amend certain 1915(c) home-and community-based waivers and the Children's Mental Health demonstration grant to cap agency and consumer directed personal care at 56 hours per week, 52 weeks per year, for a total of 2,920 hours per year. The 1915(c) waivers shall include the Alzheimer's Assisted Living, Elderly and Disabled with Consumer Direction, and HIV/AIDS Waivers. The Department shall provide for individual exceptions to this limit using criteria based on dependency in activities of daily living, level of care, and taking into account the risk of institutionalization if additional hours are not provided. The department shall have the authority to promulgate emergency regulations to implement this amendment within 280 days or less from the date of enactment of this act.”

DMAS is required, pursuant to these General Assembly mandates, and as applicable, to modify its covered service limits for respite services and personal care services in the specified home-and-community based care waivers and in the Children's Mental Health demonstration waiver. Personal care services are being limited to 56 hours per waiver individual per week, up to 52 weeks per year. Respite services are being limited to 480 hours covered annually.

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 and 325, 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.

Both of these changes are mandated by the 2011 Appropriations Act, Chapter **XXX** of the *2011 Acts of Assembly*, Item 297 WW and CCCC and are therefore exempt from public comment as provided for by the *Code of Virginia* § 2.2-4006(A)(a).

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 Virginia Administrative Code sections entitled 2011 Budget Changes for Respite Services and Personal Care Services (12 VAC 30-120-180, 12 VAC 30-120-190, 12 VAC 30-120-225, 12 VAC 30-120-233, 12 VAC 30-120-766, 12 VAC 30-120-950, 12 VAC 30-120-960, 12 VAC 30-120-980, and 12 VAC 30-135-200, 12 VAC 30-135-220) 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

Gregg A. Pane, M.D., MPA, Director

Dept. of Medical Assistance Services

Substance

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

The state regulations that are affected by this action are Waiver Programs (for home and community based programs) (120-180, 120-190, 120-225, 120-233, 120-766, 120-950, 120-960, and 120-980) and Demonstration Waiver programs (for the Children’s Mental Health waiver) (12 VAC 30-135-200 and 135-220).

The Day Support (12 VAC 30-120-1500 *et seq.*), the Technology Assisted (12 VAC 30-120-70 *et seq.*), and the Alzheimer’s Assisted Living (12 VAC 30-120-1600 *et seq.*) waivers are not reflected in this regulatory action because they do not cover either of the two services affected by these two legislative mandates.

The criteria to provide for individual exceptions to the new limit for personal care services, also required by Item 297 CCCCC, are being promulgated separately by DMAS in an emergency regulation action.

12 VAC 30-120-165, 120-180 and 120-190

These are affected sections for the HIV/AIDS waiver. The agency and consumer directed services for personal care and respite services are being changed, respectively, to 56 hours per individual per week for 52 weeks per year and 480 hours annually.

12 VAC 30-120-225, 120-233

These are the affected sections for the Mental Retardation/Intellectual Disabilities waiver. The agency and consumer directed services limit for respite services is being changed to 480 hours annually.

12 VAC 30-120-766

This is the affected section for the Individual and Family Developmental Disabilities Support (IFDDS) waiver. The agency and consumer directed services limit for respite services is being changed to 480 hours annually.

12 VAC 30-120-950, 120-960, 120-980

These are the affected sections for the Elderly and Disabled with Consumer Direction waiver. The services for both agency and consumer-directed personal care and respite services are being changed, respectively, to 56 hours per individual per week for 52 weeks per year and 480 hours annually.

12 VAC 30-135-200, 135-220

These are the affected sections for the demonstration Children's Mental Health waiver. The services for both agency and consumer directed respite services are being changed to 480 hours annually. This waiver does not cover personal care 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.