



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	_12VAC30-120-2010_
Regulation title	Money Follows the Person: Transition Services
Action title	Cover First Month's Rent
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 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

DMAS promulgated its regulations for the Money Follows the Person demonstration program in 2009. This demonstration program provides for the support for persons who choose to transition from long-term care institutions into the community. This initiative represented a collaborative effort between that Administration, stakeholders, and the Legislature to coordinate and continually build upon the use of community based services and supports rather than institutional long-term care services. Transition Coordination (12 VAC 30-120-2000) and Transition Services (12 VAC 30-120-2010) were developed based on guidelines from the Centers for Medicare and Medicaid Services and after a review of how other states defined and utilized these services.

An amendment to the *Social Security Act*, 42 USC 1396n(k)(1)(D), and an action by the 2014 General Assembly, in the *2014 Acts of the Assembly*, Item 301 FFFF, gave DMAS the authority to modify its Transition Services to provide for the coverage of the first month's rent for qualified housing as an allowable cost. To enact this change, language in 12 VAC 30-120-2010 needs to have two additions. In Section C, the words "and first month's rent" need to be added to

item 2.a. and the word “ongoing” should be included in item 3, clarifying that allowable expenses do not include ongoing monthly rental expenses.

DMAS is also updating outdated regulatory citations and acronyms in this action.

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 concerning Money Follows the Person Cover First Month's Rent with the attached amended regulations (12 VAC 30-120-2000 and 12 VAC30-120-2010) 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

Cynthia B. Jones, 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 citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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.

An amendment to the *Social Security Act*, 42 USC 1396n(k)(1)(D), and an action by the 2014 General Assembly, in the *2014 Acts of the Assembly*, Item 301 FFFF, gave DMAS the authority to modify its Transition Services, in the Money Follows the Person waiver, to provide coverage of the first month's rent for qualified housing as an allowable cost.

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.

The Money Follows the Person program is intended to facilitate individuals moving into their communities from institutional settings such as nursing facilities or residential care facilities.

Enabling individuals to move into community settings is both an economic strategy and one of welfare for the individual. Community living provides the individuals more autonomy and control over their personal care and life experiences. Individuals responding to Quality of Life surveys during institutional residence and then during their first and second years of community living tend to report higher satisfaction with life and increased happiness. Cost-savings are realized when individuals successfully live in a community setting versus institutional residence. The amount of cost savings varies depending on what Medicaid services an individual needs but can range from as low as \$14,262 to as high as \$109,578 or higher.

For some individuals, payment of their first month’s rent is the only barrier to living in a community setting. This barrier exists largely due to the timing of the receipt of Social Security income and/or other supports arriving after the initial move into the community.

Other permissible services and supports for which expenditures can be made in this program include, but are not limited to: rent and utility deposits; bedding, and; basic kitchen supplies.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-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 objections 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 regulatory action is non-controversial because, since CMS revised its national policy, both stakeholders and consumers in the Commonwealth have advocated for this change in Virginia’s administrative code. Since the stakeholders have advocated for this change, it is not likely that they would object to DMAS' use of the fast track process. The affected provider community is not expected to object because the coverage of the first month's rent will enable a small number of additional individuals to transition from institutions into their communities.

Furthermore, it is highly desirable to enable institutionalized individuals who wish to transition into their communities to do so as expeditiously as possible. Community living fosters individual independence and control, self-direction and person-centered planning, thereby creating a higher level of happiness and greater sense of well-being.

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.) Please be sure to define any acronyms.

CURRENT POLICY

The Money Follows the Person program is intended to facilitate individuals moving into their communities from institutions, typically nursing facilities or residential care facilities. "Transition services" means "set-up expenses for individuals who are transitioning from an institution to a living arrangement in a private residence." Transition Services has paid for security deposits that are required to obtain a lease on an apartment or home.

ISSUES

For some individuals, payment of their first month's rent is the only barrier to living in a community setting. This barrier exists largely due to the timing of the receipt of Social Security income and/or other supports arriving after the initial move into the community.

The Centers for Medicare and Medicaid Services now allows for the payment of both security deposit and the first month's rent from funds allocated for transition services.

RECOMMENDATIONS

DMAS recommends revision to Transition Services, 12VAC30-120-2010, to include language that allows for the payment of the first month's rent for persons who cannot meet this expense. DMAS also recommends technical corrections to outdated acronyms (changing ICF/MR to ICF/IID, for example) and updating internal references to the Virginia Administrative Code that no longer exist.

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 enable individuals to live in a community setting versus institutional setting. In addition, property owners are able to rent to individuals who are using home and community-based waivers since they now have the ability to pay their first month's rent.

Systems already exist to provide approval and reimbursement for payments of first month's rent.

There are no known disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

There are no requirements that exceed applicable federal requirements. These recommendations conform these DMAS regulations to the most recent federal regulations (Title 42 Part 441, Subpart K).

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.

There will be no localities that are more affected than others as these requirements will apply statewide.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, 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.

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	Those individuals who receive Medicaid services and live in institutional settings. Businesses will not be affected by this action.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	DMAS estimates that approximately 40 persons will be affected by this change per year with a total cost of \$33,706 (\$8,427 GF; \$25,279 NGF).
Benefits expected as a result of this regulatory proposal.	Individuals will be able to leave institutional settings and live in community settings, thus reducing the costs of care for that individual.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	No additional costs to the Commonwealth.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	No costs to localities.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	No additional costs.

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 other alternatives. First month’s rent is either included or not as a covered service.

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; and may encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents as it will allow individuals to have more authority over their lives versus living under institutional setting rules. It does not strengthen or erode the marital commitment.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this 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, intent, rationale, and likely impact of proposed requirements
12 VAC 30-120-2000		Establishes the transition coordinator as a reimbursable service by DMAS, including criteria, service units and limits, and provider requirements.	Technical, editorial changes are recommended.
12 VAC 30-120-2010		Transition Services does not include first month's rent.	Include payment for first month's rent. This will increase the number of individuals who can transition from an institutional to a community setting; thus, reducing the costs for services paid by Medicaid.