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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | DEPT. OF MEDICAL ASSISTANCE SERVICES |
| Virginia Administrative Code (VAC) citation(s) | 12 VAC 30-120-900 et seq., 12 VAC 30-90-1700 et seq. |
| Regulation title(s) | Elderly or Disabled with Consumer Direction Waiver Home and Community-Based Services for Technology Assisted Individuals Waiver |
| Action title | CCC Plus Waiver |
| Date this document prepared | November 9, 2017 |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

DMAS has received federal approval to create a new program known as Commonwealth Coordinated Care Plus (CCC+). This program seeks to include all remaining Medicaid populations and services, including long-term care and home- and community-based waiver services into managed care. These regulatory changes will allow DMAS to include those populations previously served under the Elderly and Disabled with Consumer Direction (EDCD) and Technology Assistance waivers through managed care as part of the CCC+ program.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CCC = Commonwealth Coordinated Care
 CCC+ = Commonwealth Coordinated Care Plus
 DMAS = Department of Medical Assistance Services
 EDCD = Elderly and Disabled with Consumer Direction
 TECH = Technology Assisted Waiver

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Section 2.2-4011 of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4). The 2016 *Acts of the Assembly*, Chapter 780, Item 306.JJJ(3) directed the agency to "seek reforms to include all remaining Medicaid populations and services, including long-term care and home- and community-based waiver services into cost-effective, managed and coordinated delivery systems... DMAS shall promulgate regulations to implement these provisions within 280 days of its enactment."

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled CCC Plus Waiver (12 VAC 30-120-900 et seq. and 12 VAC 30-120-1700 et seq.) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Legal basis

Other than the emergency authority described above, 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) the promulgating entity, i.e., agency, board, or person.

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.

The 2016 *Acts of the Assembly*, Chapter 780, Item 306.JJJ(3) directed the agency to "seek reforms to include all remaining Medicaid populations and services, including long-term care and home- and community-based waiver services into cost-effective, managed and coordinated delivery systems... DMAS shall promulgate regulations to implement these provisions within 280 days of its enactment."

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

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.

DMAS created a new §1915(c) waiver known as the Commonwealth Coordinated Care Plus (CCC+) waiver. These regulations will permit individuals previously served under the EDCD and Technology Assistance waivers to be included in the overall CCC+ program, which will operate under a fully integrated model across the full continuum of care that includes physical health, behavioral health, community based, and institutional services. CCC+ will operate with very few carved out services. Further, through person-centered care planning, CCC+ health plans will be expected to ensure that members are aware of and can access community based treatment options designed to serve members in the settings of their choice.

Need

Please describe 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.

This action is essential to protect the health, safety, and welfare of citizens in that it allows for care coordination for these high-risk populations and ensures access to high quality care. The program includes systems integration, contract and quality monitoring, outreach, and program evaluation.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

The regulations that are affected by this action are the Elderly or Disabled with Consumer Direction Waiver (12 VAC 30-120-900 et seq.) and the Technology Assisted Waiver (12 VAC 30-120-1700).

CCC+ builds on the foundation of Virginia’s Medicare-Medicaid enrollee financial alignment demonstration - Commonwealth Coordinated Care (CCC). The CCC demonstration was Virginia’s first opportunity to coordinate care for the high-risk dually eligible population and CCC activities in the areas of systems integration, contract and quality monitoring, outreach, and program evaluation have been nationally recognized as best practices.

Virginia seeks to strengthen this model by including additional populations and operating a mandatory, full-risk program statewide. Virginia was granted authority by the Centers for Medicare and Medicaid (CMS) to mandate the enrollment of eligible individuals into selected managed care plans using a §1915(b) waiver to run concurrently with this waiver authority. The CCC+ health plans were competitively selected to ensure access to services and high-quality care. The CCC+ health plan procurement process concluded in February 2017 and resulted in signed contracts with six health plans.

CMS granted authority to DMAS on July 1, 2017 to allow individuals previously serviced under the EDCD or Technology Assisted waiver under the Commonwealth Coordinated Care Plus (CCC+) program.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, and likely impact of proposed requirements |
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| | | | The name of Part IX in Chapter 12VAC30-120 was changed from “Elderly or Disabled with Consumer Direction Waiver” to the “Commonwealth Coordinated Care Plus Waiver” |
| 12 VAC 30-120-900 | | Contains definitions for EDCD waiver. | Relevant text from 1700-series sections was moved into section 900. The following definitions were removed: “activities of daily living”, “Americans with Disabilities Act”, “conservator”, “Elderly or Disabled with Consumer Direction Waiver”, “health, safety, and welfare standard”, “instrumental activities of daily |

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| | | | <p>living”, “LPN”, “live-in caregiver”, “long-term care”, “Medicare long-term care communication form”, “MFP”, “personal care agency”, “preadmission screening team”, “RN”, “respite care agency”, “transition coordinator”, “Virginia Uniform Assessment Instrument”.</p> <p>The following definitions were added: “adult”, “adult protective services”, “agency provider”, “applicant”, “assess”, “assessment”, “backup caregiver”, “child protective services”, “CCC Plus”, “congregate living arrangement”, “congregate skilled PDN”, “consumer-directed attendant”, “consumer-directed services facilitator”, “cost-effective”, “direct medical benefit”, “durable medical equipment”, “enrollment”, “EPSDT”, “legally responsible person”, “medically necessary”, “monitoring”, “PAS team”, “provider agreement”, “skilled private duty nursing”.</p> <p>The following definitions were revised: “assistive technology”, “barrier crime”, “consumer-directed model of service”, “direct marketing”, “environmental modifications”, “individual’s representative”, “license”, “participating provider”, “patient pay amount”, “personal care attendant”, “personal care services”, “personal emergency response system”, “primary caregiver”, “service authorization”, “service authorization contractor”, “services facilitator”.</p> <p>Throughout this project, “Srv Auth” was changed to “service authorization.”</p> |
| <p>12 VAC 30-120-905</p> | | <p>Contains waiver description and legal authority for EDCD waiver.</p> | <p>Relevant text from 1700-series sections was moved into section 905.</p> <p>The name and description of the waiver were changed to reflect that these services are offered through the CCC Plus MCOs.</p> <p>The list of facilities where waiver services cannot be provided was updated.</p> |
| <p>12 VAC 30-120-920</p> | | <p>Contains individual eligibility requirements for EDCD waiver.</p> | <p>Relevant text from 1700-series sections was moved into section 920.</p> <p>The list of institutional placements was updated.</p> <p>The PAS Team functions were updated.</p> |

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| | | | <p>Information was added about trained primary caregivers. A section on “waiver rights and responsibilities” was added.</p> |
| 12 VAC 30-120-924 | | <p>Contains covered services and limits on covered services for EDCD waiver.</p> | <p>Relevant text from 1700-series sections was moved into section 924.</p> <p>The list of covered services was updated.</p> <p>The limitation to MFP participants was removed.</p> <p>VAC cross-references were updated.</p> <p>A requirement related to trained primary caregivers was added.</p> <p>Personal care services are not available to individuals under age 21; those services shall be accessed through EPSDT.</p> <p>A section was added on skilled respite care services.</p> <p>Transition coordination was eliminated, and for transition services, the 12-month limit was removed, and a list of providers was updated.</p> <p>Updates were made to the definition of assistive technology and the individuals who may obtain the service.</p> <p>The cost for AT may not be carried over from one year to the next and the types of unapproved AT was clarified. The list of unapproved items (such as shipping and freight) was clarified.</p> <p>A section on “AT exclusions” was added.</p> <p>Language on generators was added to the environmental modifications section. New service limits and exclusions were added.</p> <p>A section was added on skilled private duty nursing.</p> |
| 12 VAC 30-120-925 | | <p>Contains respite coverage in children's residential facilities in EDCD waiver.</p> | <p>Changing "EDCD" to "CCC Plus"</p> |
| 12 VAC 30-120-930 | | <p>General requirements for home and community-based participating providers for</p> | <p>Relevant text from 1700-series sections was moved into section 930.</p> |

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| | | EDCD waiver. | <p>New language on criminal history checks was added.</p> <p>New language on RN and LPN training was added.</p> |
| 12 VAC 30-120-935 | | Contains participation standards for specific covered services for EDCD waiver. | <p>Relevant text from 1700-series sections was moved into section 935.</p> <p>The term CD employee was updated to CD attendant. The types of “parent” were defined.</p> <p>A limit on payment to family members was added.</p> <p>Section H on consumer-directed services facilitation for personal care and respite was rewritten.</p> <p>A reference to transition coordination was removed.</p> <p>A section on skilled private duty nursing was added.</p> |
| 12 VAC 30-120-945 | | Contains payment for services rules for EDCD waiver. | <p>Relevant text from 1700-series sections was moved into section 945.</p> <p>Reimbursement for consumer-directed personal care and respite, as well as PDN was changed from hourly to on a quarter-hour basis consistent with the fee schedule.</p> <p>Transition services will be reimbursed at the actual cost of the item.</p> <p>There is a \$5,000 limit per calendar year for assistive technology and environmental modifications.</p> |
| 12 VAC 30-120-1700 | | Contains definitions for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120-1705 | | Contains waiver description and legal authority for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120-1710 | | Contains individual eligibility requirements and preadmission screening rules for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120-1720 | | Contains covered services, limits, and changes to or termination of Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |

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| 12 VAC 30-120- 1730 | | Contains general requirements for participating providers of Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120- 1740 | | Contains participation standards for provision of services for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120- 1750 | | Contains payment for services rules for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120- 1760 | | Contains quality management reviews, utilization reviews, and level of care reviews for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |
| 12 VAC 30-120- 1770 | | Contains appeals rules (provider and recipient) for Technology Assisted Individuals Waiver. | Relevant text was moved into 900-series sections. Section repealed. |

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 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 are no alternatives that will meet the requirements of the General Assembly mandate and the federally approved waiver.

Public participation

Please indicate whether 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 meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Nicole Martin, Program Manager, Division of Long Term Care Services, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-371-5016, Nicole.Martin@dmas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

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; nor 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, and does not increase or decrease disposable family income.