



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 30-120 Waivered Services
Department of Medical Assistance Services
Town Hall Action/Stage: 4781 / 8441
January 19, 2022

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

Pursuant to the 2016 Appropriations Act, Item 306.JJJ(3), the Board of Medical Assistance Services (Board) proposes to create the Commonwealth Coordinated Care Plus (CCC+) waiver as a replacement for 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). This action also incorporates 1) language for overtime for Consumer-Directed attendants as required by Item 313 ZZZZ of the 2021 Appropriation Act, 2) a reduction from eight to four hours for the employment earnings disregard criteria as required by Item 313 QQQQ of the 2021 Appropriation Act, 3) a limit of 16 hours per day for a single aide, attendant, or nurse to provide care (personal care or respite services) to an individual, and 4) changes from a state fiscal year to a calendar year regarding respite, assistive technology, and environmental modification services.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Background

The 2016 Appropriations Act, Item 306.JJJ(3)² directed the Department of Medical Assistance Services (DMAS) 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...."³ Pursuant to the legislative mandate, DMAS created a new §1915(c) waiver known as the Commonwealth Coordinated Care Plus (CCC+) waiver⁴ and the Centers for Medicare and Medicaid (CMS) granted authority to DMAS on July 1, 2017. CCC+ waiver combines the populations of the Elderly or Disabled with Consumer Direction (EDCD) waiver and Technology Assisted (TECH) waiver into a single waiver.

The CCC+ waiver permits individuals previously served under the EDCD and TECH waivers to receive home and community-based services to prevent institutionalization while supporting the health, safety, and welfare of individuals. Individuals over the age of 65 or under the age of 65 with a physical disability are the targeted audience for this waiver. Individuals on the CCC+ waiver may receive services either through the fee for service model or as members of the CCC+ managed care program as part of a fully integrated model across the full continuum of care that includes physical health, behavioral health, the program for all-inclusive care for the elderly, and institutional services. In Fiscal Year (FY) 2019, there were 43,344 individuals enrolled in the waiver with expenditures totaling \$967 million.

Estimated Benefits and Costs

This action primarily combines the EDCD waiver (12 VAC 30-120-900 et seq.) and the TECH waiver (12 VAC 30-120-1700) into a single waiver without changing eligibility rules, coverage of services, reimbursement rates, etc. except as discussed below. This combined waiver was approved by CMS effective July 1, 2017 and has been in effect since then. Thus the main impact of this action is providing clarity to Medicaid providers, Medicaid members, and stakeholders by revising the regulatory text to reflect the approved waiver. The CCC+ waiver

² <https://budget.lis.virginia.gov/item/2016/1/HB30/Chapter/1/306/>

³ This mandate was carried forward in the 2017 Appropriations Act, Item 306.JJJ(3), the 2018 Appropriations Act, Item 303.SS(3), and the 2019 Appropriations Act, Item 303.SS(3).

⁴ CCC+ waiver is often confused with CCC+ managed care program, but they are separate and distinct. CCC+ program is the managed long term services and supports system. The CCC+ waiver is the specific home and community based service that supports individuals in the community in lieu of institutional care (nursing facilities). The CCC+ waiver serves individuals in the CCC+ program and individuals in fee for service.

was designed to be budget neutral. DMAS does not project costs, savings, fees, or revenues from this regulatory change except as discussed below.

One of the proposed changes represents a departure from the original ECDC or TECH waivers because it was recently mandated by Item 313 ZZZZ of the 2021 Appropriation Act⁵ and was not part of the old waivers. The mandate required DMAS to authorize effective July 1, 2021 time and a half “up to 16 hours for a single attendant who works more than 40 hours per week for attendants providing Medicaid-reimbursed consumer-directed personal assistance, respite and companion services.” This change provided overtime for consumer directed attendants. These are service providers hired by the member/their representative to provide personal care, respite, or companion care. The General Assembly provided \$9.6 million in general funds and \$9.6 million in federal funds for FY 2022 to implement this mandate. There are approximately 23,000 attendants who provide this service who became eligible for overtime pay if they worked more than 40 hours in a week. In addition to benefiting attendants directly, the use of federal funds for the higher pay rate represents an injection of new resources into Virginia’s economy with an expected expansionary effect.

Another change that was not in the original waivers is a reduction from eight to four hours for the employment earnings disregard criteria per Item 313 QQQQ of the 2021 Appropriation Act.⁶ The earnings disregard allows a certain amount of money to be disregarded during the eligibility review when the member has a job. With this change individuals who work at least 4 hours will have their earnings disregarded when eligibility is calculated. Previously, an individual would have to work at least 8 hours to have any earnings disregarded. The General Assembly has provided no funding for this change, perhaps because it affected only a few persons that DMAS is aware of.

This action also adds a limit of 16 hours per day for a single aide, attendant, registered nurse (RN), or licensed practical nurse (LPN) to provide care (personal care or respite services) to an individual. According to DMAS, this is to allow the aide/attendant/RN/LPN to take breaks to avoid possible health, safety, and welfare issues due to the provider's exhaustion. The members still have the same number of service hours authorized. Similarly, agency providers are

⁵ <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/313/>

⁶ Ibid.

not expected to be financially affected because the same number of hours will be authorized. Typically, agencies already provide more than one caregiver if the number of authorized hours per day are more than 16. However, attendants who currently work more than 16 hours in a day will be affected as they will no longer be able to provide more than 16 hours of care per day.

Finally, the action changes respite, assistive technology, and environmental modifications approvals from a state fiscal year base to a calendar year base. The purpose of this change is to move the approval base to the calendar year to be in line with the managed care enrollment. The service limits are unchanged and no fiscal impact is expected from this particular change.

Businesses and Other Entities Affected

Approximately 4,000 providers are enrolled to provide services through this waiver to approximately 43,344 Medicaid members.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The only adverse impact from this change appears to be on attendants, RNs, and LPNs who currently work more than 16 hours in a day as they will no longer be allowed to provide more than 16 hours of care per day.

Small Businesses⁸ Affected:⁹

The proposed action does not appear to adversely affect small businesses.

⁷ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁹ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Localities¹⁰ Affected¹¹

The proposed changes do not disproportionately affect particular localities or introduce costs for local governments.

Projected Impact on Employment

The legislatively mandated overtime pay for attendants may incentivize attendants to work more than 40 hours a week, but without the need for attendants willing to work overtime the impact on total employment would not be significant.

Effects on the Use and Value of Private Property

The proposed amendments do not appear to affect the use and value of private property or real estate development costs.

¹⁰ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.