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

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-122-280; 12VAC30-122-310; 12VAC30-122-320; 12VAC30-122-330; 12VAC30-122-380; 12VAC30-122-400; 12VAC30-122-410; 12VAC30-122-420; 12VAC30-122-430; 12VAC30-122-450; 12VAC30-122-500; 12VAC30-122-550; 12VAC30-122-570
VAC Chapter title(s)	Community Waiver Services for Individuals with Developmental Disabilities
Action title	DD Waiver Telehealth Update
Date this document prepared	January 6, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action will allow the Department of Medical Assistance Services (DMAS) to add telehealth as a service option for individuals receiving Developmental Disabilities (DD) waiver services, pursuant to Item 313.DDDDDD of Chapter 552 of the 2021 Acts of Assembly, Special Session 1 (the 2021 Appropriation Act), Item 304.ZZZ of Chapter 2 of the 2022 Acts of Assembly, Special Session 1 (the 2022 Appropriation Act), Item 304.ZZZ of Chapter 1 of the 2023 Acts of Assembly, Special Session 1 (the 2023 Appropriation Act), Items 288.XXX and 288.UUUU of Chapter 2 of

the 2024 Acts of Assembly, Special Session 1 (the 2024 Appropriation Act), Items 288.XXX and 288.UUUU of Chapter 725 of the 2025 Acts of Assembly (the 2025 Appropriation Act), and Items 291.RRR and 291.NNN of Chapter 1 of the 2026 Acts of Assembly, Special Session 1 (the 2026 Appropriation Act).

DMAS submitted 1915c waiver amendments to the Centers for Medicare & Medicaid Services (CMS) that were approved on June 12, 2023, and June 18, 2024, and this regulatory action will incorporate those same changes in the Virginia Administrative Code.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

IDD = Intellectual and Developmental Disability

DD Waiver = Developmental Disabilities Waiver

DMAS = Department of Medical Assistance Services

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.
b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

The 2024 Appropriation Act, Items 288.XXX and 288.UUUU, the 2025 Appropriation Act, Items 288.XXX and 288.UUUU, and the 2026 Appropriation Act, Items 291.RRR and 291.NNNN required DMAS to allow the permanent continuation of DD Waiver Telehealth/Virtual Services that were available during the COVID-19 pandemic, and to promulgate regulations within 280 days. As a result, this regulatory action is being pursued as an ER/NOIRA in accordance with Section 2.2-4011 B of the Virginia Code. The full text of the mandate is included in the Legal Basis section below.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session. The Code of Virginia § 32.1-325, includes a provision requiring the Department of Medical Assistance Services to cover telemedicine for medically necessary services.

The 2021 Appropriation Act, Item 313.DDDDDD, the 2022 Appropriation Act, Item 304.ZZZ, the 2023 Appropriation Act, Item 304.ZZZ, the 2024 Appropriation Act, Item 288.XXX, and the 2025 Appropriation Act, Item 288.XXX, specified that DMAS "…shall submit a request to the Centers for Medicare and Medicaid Services to amend its 1915(c) Home & Community-Based Services (HCBS) waivers to allow telehealth and virtual and/or distance learning as a permanent service option and accommodation for individuals on the Community Living, Family and Individual Services and Building Independence Waivers. The amendment, at a minimum, shall include all services currently authorized for telehealth and virtual options during the COVID-19 pandemic. The departments shall actively work with the established Developmental Disability Waiver Advisory Committee and other appropriate stakeholders in the development of the amendment including service elements and rate methodologies. The department shall have the authority to implement these changes prior to the completion of the regulatory process.

Additionally, Item 288.UUUU of the 2024 and 2025 Appropriation Acts states that DMAS "…shall seek federal authority through waiver and state plan amendments under Titles XIX and XXI of the Social Security Act to implement telehealth service delivery options under the Developmental Disability Waivers for the following services: Benefits Planning, Community Coaching, Community Engagement, Community Guide, Group Day Services, Group and Individual Supported Employment, Independent Living Supports, Individual and family/caregiver training, In-home Support Services, Peer Mentoring, Service Facilitation, Therapeutic Consultation, and Workplace Assistance services. However, DMAS authority is limited to those regulatory changes needed to define service delivery and claims processing requirements for those virtual support services currently authorized by the Appropriation Act or Code of Virginia. Moreover, any such changes shall be budget neutral and not increase costs. The department shall have the authority to amend the Developmental Disability Waivers through the Centers for Medicare and Medicaid Services and to promulgate emergency regulations to implement these changes within 280 days or less from the enactment of this act.

DMAS submitted 1915c waiver amendments to the Centers for Medicare & Medicaid Services (CMS) which were approved on June 12, 2023, and June 18, 2024. This regulatory action seeks to align the regulations with the current 1915c waiver amendments that allow the permanent continuation of DD Waiver Telehealth/Virtual Services that were available during the COVID-19 pandemic.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to permanently allow telehealth services in accordance with the General Assembly mandate. This regulatory action is essential to protect the health, safety, and welfare of Medicaid members who demonstrate the need for telehealth service delivery because they help individuals with intellectual and developmental disabilities and their family members in accessing necessary medical, social, educational, and other services essential to meeting the individual's goals. There are no potential issues that need to be addressed as the regulation is developed.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

A selection of DD waiver service description and allowable activities regulations are being updated to allow telehealth service delivery for the waiver services described in those sections and to establish the limitations for this form of service delivery.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The advantages of this regulatory action to the public are that it protects the health, safety, and welfare of Medicaid members who demonstrate the need for telehealth service delivery by helping individuals with intellectual and developmental disabilities and their family members in accessing necessary medical, social, educational, and other services essential to meeting the individual's goals. There are no disadvantages to the public of the Commonwealth. There are no potential issues that need to be addressed as the regulation is developed.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternative methods will accomplish the objectives of the General Assembly mandates which require DMAS to permanently add telemedicine service delivery for select DD waiver services.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Medical Assistance Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Syreeta Stewart, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-839-7282, or syreeta.stewart@dmas.virginia.gov. In order to be considered, comments must be received by 11:59 pm 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC30-122-280.		Benefits Planning Service description and requirements	Telehealth requirements added, explains what allowable activities can be provided via telehealth.

12VAC30-122-310.		Community Coaching Service description and requirements	Telehealth requirements added
12VAC30-122-320.		Community Engagement service description and requirements	Telehealth requirements added
12VAC30-122-330.		Community Guide service description and requirements	Telehealth requirements added
12VAC30-122-380.		Group Day service description and requirements	Telehealth requirements added
12VAC30-122-400.		Group and individual supported employment service description and requirements	Telehealth requirements added
12VAC30-122-410.		In-home support service description and requirements	Telehealth requirements added
12VAC30-122-420.		Independent living support service description and requirements	Telehealth requirements added
12VAC30-122-430.		Individual and family/caregiver training service description and requirements	Telehealth requirements added
12VAC30-122-450.		Peer support service description and requirements	Telehealth requirements added
12VAC30-122-500.		Services facilitation service description and requirements	Telehealth requirements added
12VAC30-122-550.		Therapeutic consultation service description and requirements	Telehealth requirements added
12VAC30-122-570.		Workplace assistance service description and requirements	Telehealth requirements added