



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Department of Medical Assistance Services; 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30 Chapter 120
<b>Regulation Title:</b>	HIV/AIDS Waiver Program
<b>Action Title:</b>	Addition of Consumer Directed Services
<b>Date:</b>	

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

The *Code of Virginia* § 2.2-4011, allows a state agency to promulgate emergency regulations "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." The addition of consumer directed services to the HIV/AIDS waiver was mandated by the General Assembly in the 2002 *Acts of Assembly*, Item 325 X. This provision directed DMAS to add consumer directed services to the AIDS waiver and to promulgate emergency regulations to become effective within 280 days. These changes are not otherwise exempt under the provisions of the *Code* § 2.2-4006. Also, Item 325 B (1) and (2) direct the agency to seek waivers for the provision of services that are less expensive alternatives to the State Plan for Medical Assistance. This provision also permits the agency to promulgate regulations that are necessary to implement such programs.

This regulatory action adds coverage of consumer-directed personal assistance services and consumer-directed respite care services (12 VAC 30-120-155, 12 VAC 30-120-170, and 12 VAC 30-120-180), to the HIV/AIDS waiver program (12 VAC 30-120-140 through 12 VAC 30-120-200). The two new consumer-directed services will be two of the seven services offered under the HIV/AIDS waiver. The other five existing services include case management, agency-directed personal care, agency-directed respite care, private duty nursing, and nutritional supplements.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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Since this emergency regulation will be effective, beginning February 21, 2003, for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act § 2.2-4007 procedures. Therefore, the agency is also requesting the Governor's approval to file its Notice of Intended Regulatory Action for these regulatory changes.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate these emergency regulations and also that they conform with applicable state and federal laws.

### Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The sections of the regulations affected by this action are: 12 VAC 30-120-140 through 12 VAC 30-120-200.

With the implementation of this regulatory change, two new services (consumer-directed personal assistance care and consumer-directed respite care) will be added to the HIV/AIDS Waiver. This new regulation outlines the requirements for consumer-directed services as well as the requirements that the personal/respite care assistant must follow in order to receive reimbursement from the Department of Medical Assistance Services (DMAS).

Consumer-directed services are services for which the recipient or family/caregiver agrees to be responsible for hiring, training, supervising, and firing of the personal assistant. These consumer-directed services are being added to this existing waiver program at the specific requests of recipients and family/caregivers and pursuant to legislative mandate. Recipients or family/caregivers who prefer to remain with the existing service model of agency-directed care will continue to have this as an available service choice. No recipients or family/caregivers will be forced to use consumer-directed services.

The adoption of consumer-directed services requires the addition of a services facilitator. A consumer-directed services facilitator is a DMAS-enrolled provider who is responsible for supporting the recipient and family/caregiver by ensuring the development and monitoring of the consumer-directed plan of care, providing employer management training, and completing ongoing review activities as required by DMAS for consumer-directed personal assistance services and respite care services.

Consumer-directed services are not currently offered under the HIV/AIDS waiver; therefore, recipients currently use agency-directed personal care or respite care services to meet their needs. If recipients who currently use agency-directed personal assistance or respite care services use consumer-directed services instead, more aides would be available to provide services to recipients who require or prefer agency-directed personal assistance or respite care services.

No other changes are being made at this time but will be addressed in the permanent rule making process to follow.

There are no disadvantages to the public or the Commonwealth with these regulations.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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Consumer-direction of personal assistance and respite care services is the least intrusive method of providing these services under the HIV/AIDS Waiver. These regulations are required in order for the agency to have the authority required to carry out the policies outlined in the regulations.

## Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.

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Consumer-directed services will strengthen the authority and rights of recipients and their caregivers to direct the care needed. Consumer-directed services will encourage self-sufficiency, self-pride, and the assumption of responsibility to the greatest levels possible. It has been DMAS' experience that recipients who use consumer-directed services require no more services than if they were offered by an agency and sometimes use fewer hours because they can tailor the services to their individual needs.

These regulations will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.