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Regulatory
Town Hall

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Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-120
Regulation title	Waiver Services
Action title	Provider Felony Convictions
Final agency action date	
Document preparation date	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The state regulations that are affected by this action are Waiver Services (12 VAC 30-120-160, 120-730). This action effects: provider notification requirements upon felony convictions in the Home and Community Based Waivers [(i) HIV-AIDS, and; (ii) Individual and Family with Developmental Disability Services]. This action also implements the technical updating (i) of form numbers that are required documents to be used by providers, and (ii) of a sister state agency's name.

PROVIDER FELONY CONVICTION (affects 12 VAC 30-120-160; 12 VAC 30-120-730)

Currently, providers are required to notify DMAS, within 30 days, of their convictions of felonies. Providers who are convicted of having committed a felony are subject to loss of their professional licenses and DMAS is federally prohibited from reimbursing non-licensed providers that the Commonwealth requires to hold a license. The current policy does not address situations when providers have pled guilty to felony charges.

Chapter 305 of the *2010 Acts of Assembly* (SB 193) amended the *Code of Virginia* § 32.1-325 to permit the director of the Department of Medical Assistance Services to immediately terminate or deny a contract to a provider who has either been convicted of a felony or who has pled guilty to felony charges. This action incorporates into the IFDDS and HIV-AIDS waivers (Chapter 120) this provider felony change.

The other waivers located in Chapter 120 (Elderly or Disabled with Consumer Direction, Mental Retardation/Intellectual Disabilities, and Technology Assisted) have separate regulatory actions currently underway and already contain this change. The Alzheimer's Waiver, which is pending publication in its proposed stage for comment period, will have this change incorporated when the agency prepares the final stage regulations.

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 and 32.1-325, 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.

This action is exempt from public comment pursuant to the *Code of Virginia* § 2.2-4006(A)(4)(a). This action is also exempt from public comment pursuant to *Code of Virginia* § 2.2-4006(A)(3) for the changes that are only changes in style or form as they constitute the updating of required form numbers and updating the name of the Department of Behavioral Health and Developmental Services from its previous agency name.

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 Agency Background document with the attached amended regulations entitled Waiver Services: Provider Felony Convictions (12 VAC 30-120-160 and 120-730) 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

Gregg A. Pane, MD, MPA, Director
Dept. of Medical Assistance Services

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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, but may decrease disposable family income depending upon if family caregivers elect to purchase more respite service hours from providers than Medicaid will now be covering.