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Fast-Track Regulation
Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-130-3040; 12VAC30-130-3050; 12VAC30-130-3060
VAC Chapter title(s)	Amount, Duration and Scope of Selected Services
Action title	Consumer-Directed Attendants
Date this document prepared	September 26, 2023

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 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. If applicable, generally describe the existing regulation.

This regulatory action incorporates the requirements of Article 2.1 of the Virginia Minimum Wage Act (§40.1-33.3 et seq. of the Code of Virginia), which passed during the 2021 General Assembly. These regulations provide a paid sick leave benefit to attendants who provide personal care, respite, or companion services to Medicaid-eligible individuals through the consumer-directed model of service. The consumer-directed (CD) model is currently available for those services in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program, Medicaid Works program, and three of Virginia's four 1915(c) Home-and-Community-Based Services Waivers: Community Living, Family and Individual Supports, and Commonwealth Coordinated Care Plus.

These regulations provide a framework to the paid sick leave benefit's eligibility process and procedures. Eligibility will be determined on a quarterly basis by the Fiscal-Employer Agent (F/EA). The F/EAs currently provides payroll and tax processing for the Consumer-Directed model for both fee-for-service and managed care individuals.

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.

CD = Consumer Directed
DMAS = Department of Medical Assistance Services
EPSDT = Early and Periodic Screening, Diagnostic and Treatment
F/EA = Fiscal-Employer Agent

Statement of Final Agency Action

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 Regulatory Review Summary entitled "Consumer-Directed Attendants" 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.

Sept. 26, 2023
Date

Cheryl J. Roberts, Director
Dept. of Medical Assistance Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

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.

These regulatory changes are expected to be non-controversial because these regulations outline a benefit for CD attendants, who previously have received no benefits providing their services to eligible individuals. The proposed methods and requirements for determination and calculation in the regulations both adhere to basic guidelines outlined in HB2137 and are not expected to be burdensome to the population of CD attendants interested in receiving the benefit.

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 and Acts of 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.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The purpose of this action is to codify eligibility requirements and procedures for the paid sick leave benefit for CD attendants that was passed during the 2021 General Assembly. DMAS is making these regulations in order to ensure clear guidelines when it comes to determining who is eligible for the benefit and how and when the benefit is issued and utilized. Article 2.1 of the Virginia Minimum Wage Act (§40.1-33.3 et seq. of the Code of Virginia), the legislative mandate for this benefit, did not provide sufficient guidelines to develop procedures for determining how to institute this new sick leave benefit, requiring DMAS to work with the Governor's Office and other state agencies to develop these criteria.

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.

The sections of the State regulations that are affected by this action are 12VAC30-130-3040; 12VAC30-130-3050; and 12VAC30-130-3060.

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.

These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community. The primary advantage of this action is to codify the Agency's procedures and requirements as it relates to how CD attendants become eligible for the paid sick leave benefit, how the eligibility is calculated, and when and how the paid sick leave benefit is issued by the F/EAs.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including:) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and) whether any costs or revenue loss can be absorbed within existing resources	As part of the passage of HB2137, the General Assembly allocated the following funds for FY2022. General: $3,443,865 Non-General: $3,443,865 These costs are expected to be on-going expenditures. As this is a new benefit being provided, there is no anticipation that such costs can be absorbed within existing resources.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one- time versus on-going expenditures.	There are no costs to other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	The benefit of this regulatory change is to codify the Agency's procedures and requirements as it relates to how CD attendants become eligible for the paid sick leave benefit, how the eligibility is calculated, and when and how the paid sick leave benefit is issued by the F/EAs.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs to localities as a result of these changes.
Benefits the regulatory change is designed to produce.	Qualified CD attendants will be eligible to receive a paid sick leave benefit.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The entire population of CD attendants will be evaluated for the paid sick leave benefit. Currently, there are 30,390 active Consumer-Directed Attendants.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	There are no small businesses affected by these changes.

All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;) fees;) purchases of equipment or services; and) time required to comply with the requirements.	There are no costs associated with reporting/recordkeeping, development of real estate, fees, or purchases of equipment.
Benefits the regulatory change is designed to produce.	The benefit of this regulatory change is to codify the Agency's procedures and requirements as it relates to how CD attendants become eligible for the paid sick leave benefit, how the eligibility is calculated, and when and how the paid sick leave benefit is issued by the F/EAs.

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.

The agency has considered proposing amendments to Article 2.1 of the Virginia Minimum Wage Act (§40.1-33.3 et seq. of the Code of Virginia) that would include some of the proposed regulatory language. However, the agency is not certain that such a bill will receive the support of a patron or will pass the General Assembly without other significant changes that would require additional regulatory actions.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulatory action is not expected to affect small businesses.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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: Jimeequa Williams, Virginia Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, (804) 225-3508, Jimeequa.Williams@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.

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.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
	12VAC30-130-3040		This section contains definitions related to the sick leave benefit.

	12VAC30-130-3050		This section contains the authority and scope of the benefit.
	12VAC30-130-3060		This section describes eligibility for the benefit.