Virginia Regulatory Town Hall

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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -120-1600 through 1660
Regulation title	Waivered Services
Action title	Alzheimer's Assisted Living Waiver Update
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Department of Medical Assistance Services intends to update the Alzheimer's Assisted Living Waiver (AAL) in order to accommodate changes in the industry and to provide greater clarity to the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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, 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The waiver became effective in 2005 with 200 slots approved by CMS and funded by the General Assembly. Despite numerous meetings with providers and stakeholders over the last four years to improve waiver access and build provider capacity there are currently only eight providers enrolled for this waiver, and only 23 individuals served in this program after 4 years. These changes will provide for a greater provider enrollment and recipient access to the waiver and continue to assure the health and safety of all. DMAS anticipates the expanding the provider base will increase waiver enrollment.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The sections of the non-State Plan regulations that are affected by this action are: 12 VAC 30 - 120-1600 through 12 VAC 30-120-1660.

Changes that will be proposed include staff requirements and activity hours for providers. Initiation of these changes will increase the provider pool and provide enhanced participation in the waiver by eligible recipients.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The agency has meet with stakeholders, providers, advocates for the past year to discuss the proposed regulatory actions and viable alternatives have been considered. Alternatives discussed included termination of the waiver, which was determined not to be a viable alternative because placement in nursing facility is not cost effective.

Discussions on strengthening the provider base focused on 4 key areas: Licensed professional staff, expanding the hours in which registered medication aides distribute medication to 24 hours a day, reducing activity hours from 20 to 16, and diversifying credentials for direct care staff. These areas have provided the best opportunity to enhance provider enrollment and waiver access.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Steve Ankiel, 600 East Broad St. Richmond, Virginia 23219, Office 804-371-8894, Fax 804371-4986 email steve.ankiel@dmas.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period. A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency has met with stakeholders, providers, advocates for the past year to discuss the proposed regulatory actions and all viable alternatives have been considered. This participatory approach has resulted in the recommendations for revisions to the regulations.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory 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.

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 which provider the recipient chooses for the item or service prescribed.