



Fast Track Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-120
Regulation title	Waivered Services
Action title	Repeal HIV/AIDS Waiver
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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulatory action proposes to repeal the agency's regulations for its HIV/AIDS waiver. These regulations are no longer required as that waiver has expired. The remaining few individuals (22) who were still participating in this waiver have been given their choice of moving to either the Elderly and Disabled with Consumer Direction (EDCD) waiver, a Program of All-Inclusive Care for the Elderly (PACE), other community services, or nursing facility placement.

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 discussion document with the attached amended regulations entitled Repeal the HIV/AIDS Waiver (12 VAC 30-120-140 through 12 VAC 30-120-201) 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

Cynthia B. Jones, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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.

DMAS has operated this waiver, under the authority of § 1915(c) of the Social Security Act, since 1991. Since then, this waiver has been renewed every five years as required by federal law.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This action repeals the regulations for the Medicaid HIV/AIDS waiver. This waiver's population has steadily declined from slightly more than 600 (in 1997) to now less than 25. Advances in medical treatments are enabling longer and healthier lifestyles for individuals with HIV/AIDS.

As with all Medicaid 1915(c) waivers, it must be determined to be cost effective in order to secure federal financial participation. With the declining population and the improved health of the affected individuals, this required cost effectiveness can no longer be demonstrated.

This regulatory action does not affect the health, safety, or welfare of citizens of the Commonwealth. Individuals who have been on this waiver and who continue to qualify for waiver services have been offered their choice of an alternative waiver, community care, or nursing facility placement.

This action also complies with the directive to DMAS as set out in the 2012 Acts of Assembly, Chapter 3, Item 307 JJJ which provides:

"The Department of Medical Assistance Services shall have the authority to amend the 1915(c) home-and-community-based Elderly or Disabled with Consumer-Direction waiver, subject to approval by the Centers for Medicare and Medicaid Services to incorporate the HIV/AIDS waiver. Pending CMS approval, the HIV/AIDS waiver will cease as of June 30, 2011. The department shall implement this change effective July 1, 2012, and prior to the completion of any regulatory process undertaken in order to effect such changes."

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

DMAS expects this rule making action to be non-controversial because the individuals who are participating will still be receiving the services that they require, just from other sources. The personal and respite care providers participate in other Medicaid waivers. There have been no private duty nursing providers used by AIDS waiver enrollees for about five years. The two remaining case management providers have only been caring for five individuals so that is not expected to constitute a major financial loss. The durable medical equipment providers who have been providing enteral nutrition services will continue to care for other Medicaid individuals who are not waiver participants.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The regulations that are affected by this action are the HIV/AIDS Waiver regulations (12 VAC 30-120-140 through 12 VAC 30-120-201). These regulations are recommended for repeal.

DMAS initiated this waiver in January 1991 to initially provide personal care, respite care, case management, private duty nursing, and nutritional supplements to 80 individuals at risk of institutionalization who were either HIV symptomatic or who had diagnoses of AIDS. In 2003, the waiver was modified, with federal approval, to also cover consumer-directed personal attendant and respite services. These individuals had to meet the nursing facility level of care criteria (functionally dependent and requiring medical/nursing supervision of care) and were determined to be at risk of nursing facility placement and for whom community-based care services via the waiver were critical to enable them to remain at home.

In 1997, this waiver cared for slightly more than 600 individuals. Total expenditures at that time slightly exceeded \$1.6 M with cost per individual at \$2,529. Since that time, there has been a steady decline in population to today's 22 individuals.

In the last five years, only one individual, a child, has required private duty nursing services. Children who have HIV/AIDS will be able to receive private duty nursing services through the Medicaid State Plan's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit (42 CFR 440-40).

Durable medical equipment providers are now able to provide enteral nutrition services to these individuals under State Plan services (12 VAC 30-50-165).

The Medicaid-eligible individuals who remain in this waiver are being offered their choice of either moving into the Elderly and Disabled with Consumer Direction waiver, moving into a Program of All Inclusive Care for the Elderly (PACE), accessing community services or moving into a nursing facility. The remaining 22 individuals have made a variety of optional choices as best meets their needs.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

There are no advantages or disadvantages to citizens in this repeal action. There are no advantages or disadvantages to the individuals who have been receiving care via this waiver because they will continue to have all of their needs met via either an alternative waiver, care in the community, or, at their choice, nursing facility placement.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements more restrictive than federal requirements contained in this regulatory action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are uniquely affected by this action as this waiver applied statewide.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no reporting or compliance requirements associated with this repeal action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and	There would be administrative costs to the state to
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<p>enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>maintain this waiver. Permitting it to expire creates no costs.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>There are no projected costs for localities to report.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The waiver individuals will be affected as they will be receiving their care through either another waiver, in the community, or in a nursing facility. There have been no private duty nursing providers in this waiver in about 5 years. The personal/respite care providers participate in other waivers that offer these services. The DME providers will continue to provide nutrition services via routine State Plan services.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The two case management providers who have been caring for 5 individuals will be negatively affected when their payments stop effective 6/30/2012. DMAS expended \$2,745 from 7/1/10 through 6/30/11 for case management services for these 2 providers.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>\$0</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Removal of unneeded regulations from the Virginia Administrative Code pursuant to the Governor’s directive in EO 14 (2010).</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

Repealing regulations does not create small business costs.

Family impact

Please assess the 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, nor does it decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-120-140 through		Sets out all of the requirements of the HIV/AIDS Waiver: definitions; coverage and requirements for individuals with AIDS; conditions and requirements for participating providers; case management; personal care services (both agency-directed and consumer-directed); respite services (both agency-directed and consumer-directed); enteral nutrition, and; private duty nursing.	Proposed change is the repeal of these regulations. The waiver has expired with the federal funding agency and the few remaining individuals are being transitioned over to other waivers or community care.