

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 30-120 Waivered Services
Department of Medical Assistance Services
Town Hall Action/Stage: 4046 / 7536
January 29, 2017 (revised January 31, 2017)

Summary of the Proposed Amendments to Regulation

Pursuant to Item 307 XXX of the 2012 Appropriation Act,^{1,2} and on behalf of the Board of Medical Assistance Services, the Director (Director) of the Department of Medical Assistance Services (DMAS) proposes several amendments to the regulation with the aim of strengthening the qualifications and responsibilities of consumer-directed services facilitators (SFs) to ensure the health, safety and welfare of Medicaid home and community-based waiver participants. The proposal was first implemented in an emergency regulation, which expires on July 10, 2017. The Director is now proposing to make the amendments permanent.

For both the Elderly or Disabled with Consumer Direction (EDCD) waiver as well as personal care services covered under the authority of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, the Director proposes to require that: 1) SFs complete DMAS-approved consumer-directed SF training and pass the corresponding competency assessment with a score of at least 80%, and 2) new SFs possess a) a minimum of

¹ “The Department of Medical Assistance Services shall amend its regulations, subject to the federal Centers for Medicare and Medicaid Services approval, to strengthen the qualifications and responsibilities of the Consumer Directed Service Facilitator to ensure the health, safety and welfare of Medicaid home- and community-based waiver enrollees. The department shall have the authority to promulgate emergency regulations to implement this change effective July 1, 2012.”

² Identical language has been continued in Item 307 XXX of the 2013 Appropriation Act, Item 301 FFF of the 2014 Appropriation Act, Item 301 FFF of the 2015 Appropriation Act, and Item 306 XX of the 2016 Appropriation Act.

either an associate's degree or higher from an accredited college in a health or human services field or be a registered nurse currently licensed to practice in the Commonwealth and possess a minimum of two years of satisfactory direct care experience supporting individuals with disabilities or older adults or b) possess a bachelor's degree or higher in a non-health or human services field and have a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults.

For the EPSDT program, the Director proposes to require that: 1) there be SFs for all consumer-directed personal care services, 2) if the SF is not a registered nurse (RN), that the SF inform the primary health care provider for the individual who is enrolled in the waiver that services are being provided and request consultation with the primary health care provider, as needed, 3) the SF have a satisfactory work record as evidenced by two references from prior job experiences from any human services work, 4) the SF submit to a criminal background check, and 5) the SF submit to a search of the Virginia Department of Social Services (VDSS) Child Protective Services Central Registry. These five items are already required under the EDCD waiver. Additionally, the proposed regulation includes amendments that improve the clarity of current requirements.

Result of Analysis

For the majority of the proposed amendments the benefits clearly exceed the costs. For other proposed changes it is less certain.

Estimated Economic Impact

Background

Individuals enrolled in certain home and community-based waiver programs or who receive personal care through EPSDT may choose between receiving services through a Medicaid enrolled provider agency or by using the consumer-directed model. Individuals who prefer to receive their personal care services through an agency are the beneficiaries of a number of administrative type functions, the most important of which is the preparation of plan of care and the monitoring of those services to ensure quality and appropriateness. This plan of care sets out all the services (types, frequency, amount, duration) that the individual requires and that his physician has ordered.

To receive consumer-directed (CD) services, the individual receiving services or another designated individual must act as the employer of record. The employer of record hires, trains, and supervises the attendant(s). Services facilitation is a service that assists the individual (and the individual's family or caregiver, as appropriate) in arranging for, directing, and managing services provided through the consumer-directed model.

Individuals choosing CD services may receive support from an SF in conjunction with the CD services. The SF is responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the plan of care, assuring service authorizations are submitted for care needs, providing training to the individual and family/caregiver on their responsibilities as an employer, and providing ongoing support of the CD services. The SF provides necessary supportive services that are designed to assist the individual in his employment duties.

Currently, DMAS' quality management review process verifies that potential and/or enrolled SFs are qualified to perform or possess the knowledge, skills, and abilities related to the duties they must fulfill as outlined in current regulations. Consumer-directed SFs are not licensed by any governing body, nor do they have any degree or training requirements established in regulation. Other types of Virginia Medicaid-enrolled providers are required by the Commonwealth to have degrees, meet licensing requirements, or demonstrate certifications as precursors to being Medicaid-enrolled providers.

Training and Competency Assessment

The Director proposes to require that all SFs complete DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80%. The training is an on-line, web based curriculum containing five modules. It is available at any time of day and may be taken at any location that has access to the Internet. No fee is charged. DMAS and the Partnership for People with Disabilities will track and produce training certificates for each services facilitator successfully completing the training. The only record keeping requirement is the retention of the training certificates and documented education, knowledge, skills, and abilities in each services facilitator's personnel record and submission of the certificate at the time of application for enrollment or renewal as a Medicaid provider. DMAS estimates that the training and assessment should take approximately four hours

to complete. To the extent that the training is well designed to prepare individuals to become competent SFs and the assessment accurately assesses competence, the benefit of this proposed requirement likely exceeds the time and recordkeeping costs expended.

College Education and Experience

The Director proposes to require that prior to enrollment by DMAS as a consumer-directed SF, all new applicants possess, at a minimum, either an associate's degree or higher from an accredited college in a health or human services field or be a registered nurse currently licensed to practice in Commonwealth and possess a minimum of two years of satisfactory direct care experience supporting individuals with disabilities or older adults; or possess a bachelor's degree or higher in a non-health or human services field and have a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults. Whether costs exceed the benefits of requiring a college degree are indeterminate. Someone without a college degree who meets all other requirements, including completing the DMAS-approved consumer-directed services facilitator training and passing the corresponding competency assessment, could arguably be as competent as an SF as someone with a college degree.

Requirement to Have a Services Facilitator

According to DMAS, of the thousands of individuals receiving consumer-directed personal care services, all had an SF prior to the emergency regulation going into effect. Thus the proposal to require that there be SFs for all consumer-directed personal care services in EPSDT does not have a current impact. The proposal would preclude any potential individuals in the future from receiving consumer-directed personal care services under EPSDT without an SF, even if that were to be their preference. The benefit of the services and reduced risk of administrative problems likely exceeds the potential small cost of the elimination of that option.

If the Services Facilitator Is Not a Registered Nurse

For EPSDT, the Director proposes to require that if the SF is not an RN, then the SF must inform the primary health care provider for the individual who is enrolled in the waiver that services are being provided within 30 days from the start of such services and request consultation with the primary health care provider, as needed. This must be done after the SF

secures written permission from the individual to contact the primary health care provider. The documentation of this written permission to contact the primary health care provider must be retained in the individual's medical record. All contacts with the primary health care provider must be documented in the individual's medical record. This proposal would create some additional time cost for the SF, but the benefit of coordinated care with the primary health care provider likely exceeds the small time cost.

References

For EPSDT, the Director proposes to require that the SF have a satisfactory work record as evidenced by two references from prior job experiences from any human services work; such references shall not include any evidence of abuse, neglect, or exploitation of the elderly or persons with disabilities or children. According to DMAS, most if not all SFs who serve EPSDT program recipients also serve EDCD clients. SFs who serve EDCD clients must have already met this requirement. For any current or future SFs who do not serve EDCD clients, this proposal introduces some time cost; but the benefit of reducing the likelihood of an abusive person being paid to care for someone who is vulnerable likely exceeds the cost.

Criminal Background Check and Child Protective Services Central Registry Search

For EPSDT, the Director proposes to require that the SF submit to a criminal background check being conducted. The results of such check must contain no record of conviction of barrier crimes as set forth in § 32.1-162.9:1 of the Code of Virginia. Proof that the criminal record check was conducted shall be maintained in the record of the SF. DMAS will not reimburse the provider for any services provided by a services facilitator who has been convicted of committing a barrier crime as set forth in § 32.1-162.9:1 of the Code of Virginia. Also the Director proposes to require that SFs submit to a search of the VDSS Child Protective Services Central Registry which results in no founded complaint. The Virginia State Police charge a \$15 fee for a criminal background check that does not include fingerprinting,³ while VDSS currently charges \$10 for a Child Protective Services Central Registry search of non-volunteers.⁴ As referenced above, most if not all SFs who serve EPSDT program recipients also serve EDCD clients; and SFs who serve EDCD clients must have already met these requirements. The

³ Source: Virginia State Police

⁴ Source: Virginia Department of Social Services

proposals would affect any current or future SFs who do not serve EDCD clients. Given the benefit of reducing the likelihood of an abusive person being paid to care for someone vulnerable, the benefits of these proposed requirements likely exceed the cost.

Businesses and Entities Affected

The proposed amendments affect individuals who receive consumer-directed Medicaid personal care services and the 540 Medicaid enrolled services facilitators and agencies.⁵ Most of these businesses qualify as small businesses.⁶

Localities Particularly Affected

The proposed amendments do not disproportionately affect specific localities.

Projected Impact on Employment

The proposed amendments do not significantly affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

Costs and Other Effects

Several of the proposed amendments increase costs for small businesses that provide consumer directed services facilitators for Medicaid home and community-based waiver participants. The proposal to require that SFs have a college degree limits the pool of candidates who can work as an SF. This may increase labor costs for small firms. The

⁵ Data source: Department of Medical Assistance Services

⁶ Source: Department of Medical Assistance Services

proposed requirements for: 1) SFs who are not an RN, 2) references, 3) criminal background checks, 4) Child Protective Services Central Registry searches, and 5) training and competency assessments all increase staff time requirements. The proposed required criminal background checks and Child Protective Services Central Registry searches cost \$25 in fees for each SF who has not already had this done.⁷

Alternative Method that Minimizes Adverse Impact

Not requiring a college degree to be an SF would likely reduce labor costs for at least some of the small firms providing services for Medicaid home and community-based waiver participants. Given that someone without a college degree who meets all other requirements, including completing the DMAS-approved consumer-directed services facilitator training and passing the corresponding competency assessment, could arguably be as competent as an SF as someone with a college degree, eliminating this requirement could potentially reduce the adverse impact for small businesses without putting the public at risk.

Adverse Impacts:

Businesses:

Several of the proposed amendments increase costs for businesses that provide consumer directed services facilitators for Medicaid home and community-based waiver participants. The proposal to require that SFs have a college degree limits the pool of candidates who can work as an SF. This may increase labor costs for firms. The proposed requirements for: 1) SFs who are not an RN, 2) references, 3) criminal background checks, 4) Child Protective Services Central Registry searches, and 5) training and competency assessments all increase staff time requirements. The proposed required criminal background checks and Child Protective Services Central Registry searches cost \$25 in fees for each SF who has not already had this done.⁸

Localities:

The proposed amendments do not adversely affect localities.

⁷ Fee sources: Virginia State Police and Virginia Department of Social Services

⁸ Ibid

Other Entities:

Several of the proposed amendments increase costs for individuals to become an SF. The proposal to require that SFs have a college degree requires individuals who do not already have a degree to expend the months or years⁹ and likely thousands of dollars necessary to complete a degree. The proposed requirements for: 1) SFs who are not an RN, 2) references, 3) criminal background checks, 4) Child Protective Services Central Registry searches, and 5) training and competency assessments all increase required time expended for individuals who are or seek to become SFs. The proposed required criminal background checks and Child Protective Services Central Registry searches cost \$25 in fees for each SF who has not already had this done.¹⁰

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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⁹ There are many people who started college but did not finish. For these individuals the costs in time and tuition would be less than for people who have no college credits.

¹⁰ Fee sources: Virginia State Police and Virginia Department of Social Services