



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-120-700 et seq.
<b>Regulation title</b>	Waiver Programs: Individuals and Families with Developmental Disabilities (also known as the IFDDS or DD Waiver)
<b>Action title</b>	Change Administration of the DD Waiver and Other Technical Changes
<b>Final agency action date</b>	
<b>Document preparation date</b>	

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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### 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.*

This action changes the daily administrative responsibilities for the Individuals and Families with Developmental Disabilities Support (DD Waiver) from the Department of Medical Assistance Services (DMAS) to the Department of Behavioral Health and Developmental Services (DBHDS). This action also: (i) updates references to mental retardation to more acceptable intellectual disability, (such as changing Intermediate Care Facility for the Mentally Retarded to Intermediate Care Facility for Individuals with Intellectual Disability); (ii) updates existing form names and numbers; (iii) changes old references to prior authorization to the new terminology of service authorization, moves existing requirements to more logical places in the text, (iv) updates state agency names, as appropriate, and; (v) removes references to the Medicaid AIDS waiver.

**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 Summary with the attached amended regulations, Waiver Services: Individuals and Families with Developmental Disabilities (DD) (12 VAC 30-120-700 et seq.) Change Administration of the DD Waiver and Other Technical Changes 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 retains unto itself, pursuant to 42 CFR § 431.10, its final authority for this waiver and the claiming of the federal financial participation (federal funding).

The *Code of Virginia* § 2.2-4006(A)(2) and (3) permits certain agency actions to be exempt from the public notice and comment requirements set out in the *Code*:

"2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority." The change contained herein concerning DBHDS administering the DD waiver, in lieu of DMAS, is a delegation of authority.

"3. Regulations that consist only of changes in style or form or corrections of technical errors." The other changes in this action (changing references to the DMAS-122 form to the DMAS-225 form, changing references to ICF/MR to ICF/IID, changing references of prior authorization to service authorization, changing 30-day extension periods to 30 calendar days, moving existing text to better locations, and updating state agency names) are changes in style or form and effect no policy changes in the DD waiver.

The removal of references to the Medicaid HIV/AIDS waiver is based on the *2013 Acts of the Assembly*, Chapter 806, Item 307 JJJ which provided for the amendment of the Elderly or Disabled with Consumer Direction waiver to incorporate HIV/AIDS waiver. This change was approved by the Centers for Medicare and Medicaid Services on XXXXXX.

**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.*

CURRENT POLICY

The regulations that are affected by this action are 12 VAC 30-120-700 et. seq., the Individual and Family Developmental Disabilities Support Waiver.

Currently, this waiver is administered by the Department of Medical Assistance Services (DMAS) and DMAS claims the federal financial participation provided by the Centers for Medicare and Medicaid Services. These regulations contain references to Intermediate Care Facilities for the Mentally Retarded (ICF/MR), form names/numbers which have been modified, outdated state agency names, and outdated terminology (such as the term 'prior authorization').

RECOMMENDATIONS

By mutual agreement, DMAS is delegating to the Department of Behavioral Health and Developmental Services (DBHDS) the administration of this waiver. By federal action, use of the term ICF/MR was changed to Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). The terms 'mental retardation' and 'mentally retarded' have been removed from the lexicon due to their pejorative nature.

DMAS has replaced its Patient Pay Information form (DMAS-122) with the Long Term Care Communication form (DMAS-225). DMAS has changed its terminology about the 'prior authorization' of certain services to 'service authorization' of those same services. DMAS is also updating these regulations to reflect the updated names of sister state agencies (such as the Department of Rehabilitative Services has changed to the Department for Aging and Rehabilitative Services).

HIV/AIDS Waiver

The *2013 Acts of the Assembly* provided for this waiver to be incorporated into the Elderly or Disabled with Consumer Direction (EDCD) waiver, with the approval of the Centers for Medicare and Medicaid Services (CMS). CMS approved this change on XXXXX and the remaining few AIDS waiver individuals were shifted into the EDCD waiver for their ongoing care. These individuals (fewer than 50) experienced no disruption in care or services.

**Family impact**

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

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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.