



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Department of Medical Assistance Services (DMAS)
VAC Chapter Number:	Chapter 120
Regulation Title:	Individual and Family Developmental Disabilities Support (IFDDS) Waiver
Action Title:	Children Covered by IFDDS Waiver
Date:	Aug. 30, 2002; NEED GOV'S APPROVAL BY SEPT. 27

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

This regulatory action qualifies as an emergency, pursuant to the authority of the Code of Virginia, 1950 as amended, § 2.2-4011, because it is responding to a change in the Virginia Appropriations Act that must be effective within 280 days from the date of enactment of the Appropriations Act (the 2002 *Acts of Assembly*, Chapter 899, Item 325 W) and this regulatory action is not otherwise exempt under the provisions of the Code § 2.2-4006. Since DMAS intends to continue regulating the two issues contained in this emergency regulation past the

effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.

These suggested emergency regulations are necessary for the Department of Medical Assistance Services (DMAS) to comply with the 2002 *Acts of Assembly*, Chapter 899, Item 325.W which states:

“The Department of Medical Assistance Services shall provide for the transfer from the Mental Retardation Waiver to the Individual and Family Developmental Disabilities Support Waiver for children who reach age 6, are receiving services under the Mental Retardation Waiver, and who have been determined not to have a diagnosis of mental retardation. Contingent upon approval of these changes by the Centers for Medicare and Medicaid Services, the Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment date of this act. The Department shall implement these necessary changes to be consistent with federal approval of the waiver changes.”

DMAS received on July 1, 2002, federal approval of these waiver changes.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

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 the Department of Medical Assistance Services (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

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The

statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The suggested emergency regulations include the following changes:

CITATION	RECOMMENDED CHANGE	RATIONALE
12VAC30-120-700 Definitions	Insert: Definitions for case manager, community services board, behavioral health authority and Mental Retardation Waiver.	To ensure clarity.
12VAC30-120-710.A General Coverage and requirements for all home and community-based care waiver services.	Insert: Mental Retardation (MR) Waiver recipients who are six years of age, on or after October 1, 2002, who are determined to not have a diagnosis of mental retardation and continue to meet all IFDDS Waiver eligibility criteria, shall be eligible for and transfer to the IFDDS Waiver effective with their sixth birthday. Psychological evaluations confirming diagnoses must be completed less than one year from the child’s sixth birthday. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver	In order to comply with the Chapter 899 of the 2002 Acts of Assembly.
12VAC30-120-720.B.3	Insert: For children who are on the MR Waiver and transition to the IFDDS waiver at age six, case managers shall submit to DMAS the most recent level of functioning, CSP, and a psychological evaluation completed no more than one year prior to the child’s sixth birthday that determines no diagnosis of mental retardation exists.	In order to comply with the Chapter 899 of the 2002 Acts of Assembly.
12VAC30-120-720.B.4	Insert: The case manager is responsible for notifying DMAS, DMHMRSAS, and DSS, via the DMAS-122, when a child transfers from the MR Waiver to the IFDDS Waiver	In order to comply with the Chapter 899 of the 2002 Acts of Assembly.
12VAC30-120-720.E.1 Recipient qualification and eligibility requirements; intake process.	Insert: For MR Waiver recipients transferring to the IFDDS Waiver, case manager must provide the recipient with a list of support coordinators. The individual will choose a support coordinator within ten calendar days and the screening entity/case manager will forward the screening materials, CSP, and all	In order to comply with the Chapter 899 of the 2002 Acts of Assembly.

	<p>other MR Waiver related documentation within ten calendar days to the selected support coordinator.</p>	
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DMAS does not anticipate any potential issues that may need to be addressed as a permanent final regulation is developed.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

There are no appropriate alternatives as the emergency regulations are required for compliance with the 2002 *Acts of Assembly*, Chapter 899.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.

DMAS anticipates that the proposed emergency regulations will have positive impact on the institution of the family and family stability. With the suggested emergency regulations, eligible clients and their families will not risk losing services and supports when the clients are discharged from the MR Waiver. Transferring these clients to the IFDDS Waiver will avoid the termination of services and supports clients and their families have become dependent upon in order to avoid institutionalization. The suggested regulations may assist families and clients with strengthening the authority and rights of parents in the education, nurturing, and supervision of their children.