



Final Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapter 120
Regulation title	Alzheimer's Assisted Living (AAL)
Action title	Establish an assisted living waiver for individuals with Alzheimer's and related dementias
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This regulatory action establishes an assisted living waiver for individuals with Alzheimer's and related dementias. The changes in this action provide additional services to residents of assisted living facilities who receive Auxiliary Grants, who meet nursing facility criteria, and have a diagnosis of Alzheimer's or a related dementia. Through this regulatory action, the AAL Waiver recipients would receive an appropriate level of care within special care units of assisted living facilities. By providing specialized services to eligible individuals living in an assisted living facility, the AAL Waiver provides an alternative to 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 Background Document with the attached amended regulations regarding Alzheimer’s Assisted Living (AAL) Waiver (12VAC 30 -120-1600 to 30-120-1699) 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 and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the 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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to establish a new waiver program which protects the health safety and welfare of vulnerable citizens, by providing additional services to residents of assisted living facilities, who receive Auxiliary Grants, who meet nursing facility criteria, and who have a diagnosis of Alzheimer’s or a related dementia. Related dementia is defined as an individual with a diagnosis of Dementia of the Alzheimer’s Type as defined by the Diagnostic and Statistical Manual of Mental Disorders. Individuals eligible to be placed on the AAL Waiver are currently either (a) remaining at home where a spouse or adult child is typically serving as primary care giver; (b) residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the Auxiliary Grant payment; or (c) residing in a more restrictive setting such as a nursing facility. Through the proposed Alzheimer’s Assisted Living (AAL) Waiver, recipients would be able to receive an appropriate level of care within special care units of assisted living facilities.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The section of the regulations affected by this action is 12VAC 30-120-1600 to 30 -120-1699. The 2004 General Assembly through Item 326.SS of the 2004 *Acts of Assembly*, Chapter 4 mandated that the Director of the Department of Medical Assistance Services (DMAS) develop a 1915(c) Medicaid-funded Home and Community-Based Waiver for individuals with Alzheimer's or a related dementia. DMAS formed an advisory group of stakeholders to collaborate on the development of the waiver proposal. The advisory group consisted of representatives of the Virginia Department of Social Services, the Virginia Department for the Aging, State Long Term Care Ombudsman, the Alzheimer's Association, the Virginia Association of Non-Profit Homes for the Aging, the Virginia Health Care Association, Virginia Association of Area Agencies on Aging, Virginia Association for Home Care, Virginia Association of Homes for Adults, Virginia Association of Personal Care Providers, Sunrise Senior Living, Sentara Life Care Corporation, two caregivers of individuals with Alzheimer's, and DMAS. DMAS submitted a report to the Governor and the Chairman of the Joint Commission on Health Care in October 2004.

New regulations containing the policy for the AAL Waiver were developed from input that stakeholders gave in the development of the report. The regulations are contained in seven new sections under 12VAC30-120, Department of Medical Assistance Services, Waiver Services. The seven sections are: 12VAC30-120-1600 contains definitions of AAL Waiver terms; 12VAC30-120-1610 outlines individual eligibility requirements; 12VAC30-120-1620 defines covered services under the AAL Waiver, 12VAC30-120-1630 outlines general requirements for home and community-based participating providers; 12VAC30-120-1640 defines participation standards for AAL waiver services participating providers; 12VAC30-120-1650 outlines DMAS payment for services; and, 12VAC30-120-1660 outlines DMAS utilization review of the AAL Waiver.

The AAL Waiver covers only those individuals who: have a diagnosis of Alzheimer's or a related dementia who meet the criteria for, and choose to live in, an assisted living facility; and who receive an Auxiliary Grant. By providing specialized services to eligible individuals living in an assisted living facility, the AAL Waiver provides an alternative to nursing facility placement. Individuals eligible to be placed on this Waiver are currently either: remaining at home where a spouse or adult child is typically serving as primary care giver; residing in an assisted living facility possibly without the benefit of specialized services, which are not provided for in the Auxiliary Grant payment; or residing in a more restrictive setting such as a nursing facility. Through the AAL Waiver, recipients would be able to receive an appropriate level of care within special care units of assisted living facilities.

While individuals admitted to the AAL Waiver will receive services in assisted living facilities (ALF), it is important to note that individuals must also meet nursing facility admission criteria in order to receive AAL Waiver services and be diagnosed with Alzheimer's or dementia of the Alzheimer's Type. Therefore, while current ALF regulations meet the requirements for people at the regular assisted living level of care, they are not deemed to be sufficient to meet the health and welfare requirements for a Medicaid Waiver. The additional regulations are necessary to establish sufficient safeguards for this vulnerable population. Wherever possible, DMAS has

worked to make these regulations consistent with the ALF regulations maintained by the Department of Social Services.

The regulations are necessary to have operational authority for the waiver, which began effective, July 1, 2005.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no disadvantages to the public or the Commonwealth associated with this regulation. The primary advantages are that Medicaid recipients with Alzheimer's will be better served and better protected with regard to their medical care. These regulatory changes were accomplished with significant input from the Alzheimer's community, and reflect improvements in care areas geared towards the specific needs of individuals with Alzheimer's.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There were no substantive changes made between the final regulation and the proposed regulation.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the December 11, 2006, *Virginia Register* (VR 23:7 pp1072) for their public comment period from December 11, 2006 through February 9, 2007. No comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Changes in the regulations subsequent to the publication of the Emergency regulation are in bold type.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	12 VAC 30-120-1600	N/A	Definitions section: provides definitions for key terms used in the Alzheimer's Assisted Living (AAL) Waiver. In the definition for "Comprehensive assessment" the reference to "assisted living facility RN" was changed to "assisted living facility staff."
N/A	12 VAC 30-120-1610	N/A	Individual Eligibility Requirements: describes eligibility criteria for entry into the AAL Waiver and placement on the waiting list. n.b. The emergency regulation contained an eligibility requirement that an individual applying for entry into this Waiver program be aged 55 or older. This was referenced in 12 VAC 30-120-1610 (A), (B) and (D). After consultation with the Department of Planning and Budget and the Secretary of Health and Human Resources, DMAS has removed this eligibility requirement.
N/A	12 VAC 30-120-1620	N/A	Covered Services: describes which medical services are available to participants in the AAL Waiver
N/A	12 VAC 30-120-1620	N/A	Subsection (B)(1) was edited in the proposed regulation to clarify the requirements for medication administration. In (B)(1)(b) the word "and" was added at the end of the first sentence following "Social Security Act § 1614," and in the third sentence the word "must" was changed to "may."
N/A	12 VAC 30-120-1630	N/A	General Requirements for Participating Providers: describes criteria for providers who provide services to AAL Waiver enrollees. In subsection (F) (1) the final sentence referring to the effective date and the notification letter was deleted as redundant.

N/A	12 VAC 30-120-1640	N/A	Participation Standards for Provision of Services: describes criteria for facilities that provide services to AAL Waiver enrollees. DMAS modified subsection (E)(Administrators) to refer to Dept. of Social Services and Board of Long-Term Care Administrators requirements for facility administrators. DMAS also modified subsections (F)(1) & (4) (Nursing Staff Requirements) to clarify these requirements. DMAS modified subsection (L) (Staff training requirements); changing the requirement that staff receive dementia-specific training from “prior to resident contact” to “within 30 days of employment.” The requirement that the trainer not be employed by the facility was dropped.
N/A	12 VAC 30-120-1650	N/A	Payment for service: describes provider payment methodologies.
N/A	12 VAC 30-120-1660	N/A	Utilization review: describes this Agency process for quality management review.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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. The AAL Waiver will have a positive impact on families. By providing AAL Waiver services, the waiver will provide a less restrictive alternative to nursing facility placement for those families caring for a family member with Alzheimer’s.