



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services; 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30 Chapter 120
<b>Regulation Title:</b>	Elderly and Disabled Waiver Program
<b>Action Title:</b>	Personal Emergency Response System
<b>Date:</b>	GOVERNOR APPROVAL NEEDED BY 1/29

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 adds Personal Emergency Response Systems (PERS) (12 VAC 30-120-55) to the Elderly and Disabled (E&D) Waiver program (12 VAC 30-120-10 through 12 VAC 30-120-60). PERS will be one of the four services offered under the E&D Waiver. The other three services include personal care, respite care, and adult day health care services. No other changes (recipient eligibility requirements, provider qualifications) are being changed at this time but will be addressed in the permanent rule making process to follow.

Personal emergency response systems (PERS) are electronic devices that enable community recipients who are at high risk of institutionalization to secure help in an emergency. PERS

services will be limited to those recipients who live alone or are alone for significant parts of the day having no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision by aides or attendants.

Of those recipients receiving personal care services, approximately 10% require the services due to the need for supervision. Supervision is a covered service within the plan of care when its purpose is to supervise or monitor those recipients who require the physical presence of the aide to insure their safety during times when no other support system is available. The inclusion of supervision in the plan of care is appropriate only when the recipient cannot be left alone at any time due to mental or severe physical incapacitation.

PERS is a service that provides electronic access to emergency crisis intervention for medical or environmental emergencies. This is accomplished through a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the recipient's home telephone line. For those recipients who are physically frail and impaired, this service could greatly improve their autonomy and ability to remain in the community without requiring an aide's presence. PERS is not currently offered under the Elderly and Disabled Waiver; therefore, recipients currently utilize personal care services to meet their supervision needs. If recipients who require supervision services utilize PERS instead of personal care services, more aides would be available to provide direct services to recipients who require personal care services.

This emergency regulation is necessary because of the shortage of personal care aides in Virginia to provide direct attendant-care services to recipients. This shortage of personal care aides results in recipients not receiving the needed services that help them remain in the community and prevent institutionalization.

This regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4)

## 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.*

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The Code of Virginia § 2.2-4011, allows a state agency to promulgate emergency regulations that "an agency finds are necessitated by an emergency situation. For the purposes of this subsection, "emergency situation" means a situation (i) involving an imminent threat to public health or safety...". Since there is a serious shortage of personal care aides in Virginia, DMAS recommends adding this service to the E&D Waiver. This additional service will allow

recipients to acquire a mechanical system that would ensure their health and safety in their home environment and thus avoid institutionalization.

Since this emergency regulation will be effective, beginning January 1, 2002, for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act § 2.2-4007 procedures. Therefore, the agency is also requesting the Governor's approval to file its Notice of Intended Regulatory Action for these regulatory changes.

### 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.*

With the implementation of this regulatory change, one service would be added to the E&D Waiver allowing recipients to remain in their homes and enabling them to call for assistance in emergencies. This new regulation outlines the requirements for the PERS provider as well as the requirements that the PERS provider must follow in order to receive reimbursement from the Department of Medical Assistance Services (DMAS).

There are no potential issues that need to be addressed as the 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 other technological alternatives that DMAS has considered, in response to the shortage of personal aides and attendants in the Commonwealth, as this addition of PERS enable recipients to remain in their homes instead of being institutionalized.

### 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.

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This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase nor decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.