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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>12 VAC 30-1600 et seq.</u>
<b>Regulation title(s)</b>	Waiver Programs: Alzheimer's Assisted Living Waiver (AAL)
<b>Action title</b>	AAL Waiver Changes
<b>Final agency action date</b>	
<b>Date this document prepared</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) or an agency's basic statute, the agency is not required, however, 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Department of Medical Assistance Services (DMAS) offers the Alzheimer's Assisted Living Waiver as one of its home and community based waiver programs under the authority of the Social Security Act § 1915(c). This federal statute permits Medicaid programs to offer services to individuals who wish to remain in their homes and communities when doing so is less costly than institutionalization.

This waiver defines Alzheimer's Disease and related dementias as meaning the same as that which is set out in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition (DSM-IV-TR). This is being updated to the 5<sup>th</sup> edition. In addition, Chapter 665, Item 301 TTTT of the

2015 Acts of Assembly, directed DMAS to expand the definition of covered individuals to include residents of a 'safe, secure environment' as meeting the requirements to participate in this 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 Programs: Alzheimer's Assisted Living Waiver (12 VAC 30-120-1600 *et seq.*) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the *Code of Virginia* § 2.2-4006(A), 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.

Chapter 665, Item 301 TTTT of the 2015 Acts of the Assembly stated:

"TTTT. Notwithstanding 12 VAC 30-120-1600 *et seq.*, a resident of a 'safe, secure environment' as defined in 22 VAC 40-70-10 shall be deemed to have met the requirements of 12 VAC 30-120-1610 B for the purposes of the Alzheimer's Assisted Living Waiver." This action qualifies as exempt from public comment pursuant to the legislative mandate.

## 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.*

This final exempt action affects the regulations for the Alzheimer's Assisted Living Waiver (12 VAC 30-120-1600 *et seq.*).

### CURRENT POLICY

DMAS implemented the Alzheimer's Assisted Living Waiver in 2006 and currently is serving approximately 50 individuals. This waiver provides assisted living services to enable these waiver individuals to remain in their communities. The services that are covered for these qualifying individuals are: (i) personal care services (assistance with Activities of Daily Living); (ii) homemaker services; (iii) chore services; (iv) attendant care; (v) companion services; (vi) medication administration; (vii) skilled nursing services; and (viii) therapeutic social and recreational programming.

The individuals who require these types of services can be cared for in assisted living facilities (ALFs). Such facilities are licensed by the Department of Social Services (22 VAC 40-72).

### ISSUES

Clarification of the “related dementia” definition, to include individuals who cannot recognize danger or protect their own safety and welfare and are residents of a safe, secure environment may increase the number of individuals who qualify for this waiver program. This regulatory amendment is intended to increase accessibility by these individuals with related dementias and to assist their families who struggle to meet the ongoing day-to-day physical, medical, and behavioral needs of their family members.

Several ALF providers have inquired about the types of dementias that meet the requirements for the individuals' participation in the Alzheimer's waiver. Expanding and clarifying the types of dementia diagnoses that can qualify for the waiver may also provide incentive for additional ALFs to enroll, in turn providing an increased pool of provider resources from which families may choose for their relatives' supports and services. Currently there are fourteen (14) participating waiver providers.

The DSM 4<sup>th</sup> Edition has been replaced with the DSM 5<sup>th</sup> Edition by the publisher and it now includes many neurological/cognitive disorders of dementia and Alzheimer's. The publisher is the American Psychiatric Association. DMAS wishes to refer to the most current 5<sup>th</sup> Edition in these regulations.

### RECOMMENDATIONS

DMAS is complying with the legislative directive contained in Chapter 665 of the 2015 *Acts of Assembly* as previously referenced. DMAS recommends adopting the expanded definition of covered individuals and the use of the DSM-5 which provides for the expanded definition of related dementias as required in the legislative mandate.

### Family Impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory 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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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, and is not expected to affect disposable family income. These changes may ease some of the burden of adult children in caring for aging parents who have diagnoses of Alzheimer's or related dementias.