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Fast-Track Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-120
Regulation title	Waivered services
Action title	Money Follows the Person Program Changes
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Department of Medical Assistance Services received approval of Virginia's Money Follows the Person (MFP) Demonstration application from the Centers for Medicare and Medicaid Services (CMS). The Demonstration's vision is to create a system of long-term services and supports that enables available funds to "follow the person" by supporting individuals who choose to transition from long-term care institutions into the community.

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 regulations Waivered Services: Money Follows the Person Program Changes (12VAC 30-120-70, *et seq.*) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, 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 legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of 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. 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. Item 302, HHH of the 2007 Appropriation Act states

“Contingent upon approval by the Centers for Medicare and Medicaid Services as part of the Money Follows the Person Demonstration grant, the Department of Medical Assistance Services shall seek federal approval for necessary changes to home and community-based 1915(c) waivers to allow individuals transitioning from institutions to receive care in the community. The Department of Medical Assistance Services shall promulgate any necessary emergency regulations within 280 days or less from the enactment date of this act. The Department may submit this proposal, with recommended options and funding amounts, as a request in the 2008-10 biennial budget.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amended regulation is required in order to establish the regulatory structure for the successful implementation of the Money Follows the Person (MFP) Demonstration. This regulation must be promulgated and the regulations must be in effect in order to receive CMS approval to begin the MFP Demonstration in May 2008.

The purpose of the MFP Demonstration is to strengthen Virginia's long-term services and supports using available funds to "follow the person" by supporting individuals who choose to transition from long-term care institutions into the community. The MFP Demonstration is one of the Governor's set priorities for community integration of persons who reside in institutions. This Initiative also reflects a strong collaborative approach with this Administration and the Legislature to coordinate and continually build upon rebalancing efforts of the Commonwealth's long-term support system (i.e., increasing the use of home- and community-based care services (HCBS) rather than institutional long-term care services). This collaborative approach has enabled the Commonwealth over the past several years to be resourceful in balancing the state's budget without cutting Medicaid long-term support services.

Rationale for using Fast-Track process

Please explain the rationale for using the Fast-Track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the Fast-Track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

The Fast-Track regulatory process is required in order to meet the Centers for Medicare and Medicaid's (CMS') deadline for Virginia to successfully implement the Money Follows the Person Demonstration by May 2008. If this regulation is not promulgated in by this timeframe, Virginia would be in jeopardy of losing the four-year MFP Demonstration and the enhanced federal funding that is provided as a part of the Demonstration. This Fast Track regulation is not controversial because the changes being made to existing regulations are minimal, addressing only those new services being added to each Waiver program pursuant to MFP; new sections are also being added that address only those new services, such as Transition Coordinator and Transition Services, and Consumer-Directed Supported Employment, which are being added under the MFP grant.

Much of the preliminary work to develop the MFP regulatory language was completed by a regulatory review team of DMAS staff. Other individuals involved with the MFP Demonstration regulation include representatives from the Department of Mental Health, Mental Retardation and Substance Abuse Services, and key external stakeholders involved with the DMAS Waiver program population. These individuals reviewed and provided input to this Fast-Track regulation.

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.)

These Fast-Track regulations reflect the needed changes to the following six HCBS waivers to support individuals who choose to transition from long-term care institutions into the community. They are the Technology Assisted (Tech), HIV/AIDS, Elderly or Disabled with Consumer Direction (EDCD), Mental Retardation (MR), MR Day Support (DS) and Individual and Family Developmental Disabilities Support (IFDDS) Waivers.

The changes to these six waivers include: 1) adding the services of Personal Emergency Response System (PERS), Medication Monitoring, and Transition Services to the Tech Waiver; 2) adding the services of Transition Coordination, Environmental Modifications, Assistive Technology, and Transition Services to the EDCD Waiver; 3) adding the services of PERS and Medication Monitoring, Environmental Modifications, Assistive Technology, Transition Services to the HIV/AIDS Waiver; 4) adding Consumer-Directed Supported Employment services to the DS Waiver; and 5) adding the services of Consumer-Directed Supported Employment and Transition Services to the MR and IFDDS Waivers.

Three of these services, Transition Coordination, Consumer-Directed Supported Employment, and Transition Services, are new waiver services. Language has been developed based on CMS guidelines and a review of how other states define and utilize these services. In addition, existing waiver services (PERS, Medication Monitoring, Environmental Modifications and Assistive Technology) are being expanded to other waivers in an effort to facilitate the transition from institutional living to community living. The new services mentioned above are being added as follows: Transition Services is being added to the AIDS, EDCD, DS, IFDDS, MR and Tech Waivers to provide one-time funding (up to \$5,000 per person, per lifetime) to assist with costs incurred by individuals who are transitioning into the community. Examples of expenses include rent and utility deposits and necessary furniture. One other service, Transition Coordination, is added to the EDCD Waiver to assist institutionalized transitioning into the EDCD Waiver because a case management service currently does not exist in this program. This service will be time-limited and the Coordinator will assist the individual up to three months prior to leaving the institutional setting and up to nine months following the individual's discharge into the community. All other HCBS waivers already have a case management service that can assist institutionalized individuals with transitioning into these programs.

Finally, this regulation addresses changes to units of service for provider billing purposes. DMAS is currently being directed by the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS), to no longer use preset units of service for Medicaid Waiver reimbursement. DMAS is working with CMS to establish time-based billing for the DMAS fee schedule for Waiver services, and this is reflected in the MFP regulations.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of these Fast-Track regulations is that they allow greater support and services for individuals who choose to transition from long-term care institutions into the community. These Fast-Track changes will improve the infrastructure for community-based long-term support services by adding new services to six of the HCBS waiver program.

This Demonstration will support Virginia’s implementation of the *Olmstead* decision and will complement the efforts of the recently awarded Systems Transformation Grant that aims to improve the infrastructure for community-based long-term support services.

There are no disadvantages to the public or the Commonwealth.

This Fast-Track regulatory action will have a positive impact on families in that individuals who are currently residing in an institution will have the option of transferring to the community and have the opportunity to live in a more family-like environment in their community.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

This regulation has no language that is more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that would be particularly affected by this Fast-Track action. This is a statewide Demonstration.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small businesses. The language amendments for the MFP Demonstration follow CMS requirements for program participation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The costs of the Demonstration Project for the next two state fiscal years is as follows:</p> <p>For state fiscal year '08 the cost is \$418,821 in State General Funds (GF), with an enhanced Federal Medicaid Match of \$602,617.</p> <p>For state fiscal year '09 the cost is \$3,113,261 in State General Funds (GF), with an enhanced Federal Medicaid Match of \$4,123,638.</p> <p>For state fiscal year '10 the cost is \$3,121,855 in State General Funds (GF), with an enhanced Federal Medicaid Match of \$4,132,232.</p> <p>The anticipated state GF does not take into account the anticipated savings that will result from individuals transitioning from institutions into the community. These savings are as follows:</p> <p>For state fiscal year '08 the savings amount to \$65,232 in General Funds (GF). For state fiscal year '09 the savings amount to \$3,243,413 in General Funds (GF). For state fiscal year '10 the savings amount to \$3,426,175 in General Funds (GF).</p>
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	<p>The Centers for Medicare and Medicaid Services expects that any cost savings realized through the Demonstration will be placed back into the long-term care system to continue the Commonwealth's rebalancing efforts.</p> <p>\$229,873 of GF needed in State Fiscal Year 2008 will be one-time administrative (information technology) expenses to launch the MFP Demonstration. Ongoing administrative expenses for the Demonstration are expected to be \$968,213 GF for state fiscal year 2009 and \$976,807 for '10.</p> <p>This Demonstration enables Virginia to receive an enhanced match of 75% for home and community-based service expenditures for 12 months for each qualified person who transitions into the community.</p>
<p>Projected cost of the regulation on localities</p>	<p>There is no projected additional cost to localities related to the implementation of the MFP Demonstration.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Individuals who receive HCBS Waiver services and the providers that offer HCBS waiver services will be affected by this regulation.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is anticipated this regulatory package will affect 1,041 recipients who are anticipated to transition in the MFP Demonstration. In addition, 21,000 other HCBS waiver recipients will be eligible for the new waiver services and 2,500 service providers will be affected. Of these providers, 400 are predicted to be small businesses. The addition of new services and expansion of existing services will help generate new revenue for small businesses and all providers involved.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The total projected cost for the MFP Demonstration is \$6,653,937 for state fiscal years '08 through '10. This includes administrative expenses for operating the Demonstration as well as expenses for adding new services to existing HCBS waiver programs.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives to meeting the CMS requirements for the MFP Demonstration. If these regulatory changes are not made, CMS will not approve Virginia’s MFP Demonstration program to begin in May 2008.

DMAS initially sought to combine the MFP changes with a consolidation of the Waiver program regulations. Based upon public input DMAS received regarding this approach, the Agency decided to move forward with the MFP as a freestanding regulatory package, and initiate the Waiver program regulatory consolidation at a later time.

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.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will strengthen the authority and rights of parents in determining the most appropriate care for their child; it will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, or one’s children; nor will it strengthen or erode the marital commitment.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-70.		Definitions (Tech Waiver)	Adds definitions for “Assistive Technology” and “Transition Services” and adds clarifying language to several other definitions.

12VAC30-120-90.		Covered services and provider requirements	Adds descriptive language for Assistive Technology, Environmental Modifications and Transition Services.
12VAC30-120-140.		Definitions (AIDS Waiver)	Adds descriptive language for Assistive Technology, PERS, Environmental Modifications, Transition Coordinator and Transition Services.
12VAC30-120-211		Definitions (MR Waiver)	Adds descriptive language for “Job Coach”, updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD). Adds definition for “Transition Services” and adds clarifying language to several other definitions.
12VAC30-120-213.		General coverage and requirements for MR waiver services.	Adds definitions for Transition Services and adds clarifying language to several other definitions.
12VAC30-120-225.		Consumer-directed model of service delivery	Adds clarifying language regarding Job Coach, supported employment and consumer direction.
12VAC30-120-229.		Day support services	Addresses changes to service units.
12VAC30-120-237.		Prevocational services	Addresses changes to service units.
12VAC30-120-247.		Supported employment services	Addresses changes to service units and clarifications regarding Job Coach services.
12VAC30-120-700.		Definitions (DD Waiver)	Adds clarifying language regarding Job Coach and Transition Services; updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD).
12VAC30-		General coverage and	Updates reference from American

120-710.		requirements for all home and community-based waiver services.	Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD), and adds clarifying language regarding consumer-direction and Transitional Services.
12VAC30-120-754		Supported employment services	Adds clarifying language regarding consumer-direction and addresses changes to service units.
12VAC30-120-758		Environmental modifications	Adds clarifying language regarding this service.
12VAC30-120-762.		Assistive technology	Adds clarifying language regarding this service.
12VAC30-120-770		Consumer-directed model of service delivery	Discusses the requirements and standards for consumer-directed services.
12VAC30-120-900		Definitions (EDCD Waiver)	Adds clarifying language regarding Assistive technology, , Environmental Modifications, Transitional Coordinator and Transition Services
12VAC30-120-910.		General coverage and requirements for EDCCD services.	Adds clarifying language regarding Assistive technology, , Environmental Modifications, Transitional Coordinator and Transition Services
12VAC30-120-920.		Individual eligibility requirements	Removed the restriction that EDCCD Waiver enrollees cannot live in Adult Foster Care settings in order to permit individuals living in this setting to receive EDCCD waiver services; amended the restrictions on Assisted Living Facilities (ALFs) to permit individuals living in ALFs that house four individuals.
12VAC30-120-970		Personal Emergency Response System (PERS).	Updates VAC references and adds clarifying language regarding case managers.
12VAC30-		Definitions (MR Day	Adds clarifying language regarding

120-1500		Support Waiver)	Consumer-directed model and Consumer-directed facilitator services, Job Coach, and updates references to AAMR.
12VAC30-120-1510		General coverage and requirements for Day Support Waiver services.	General coverage and requirements for Day Support Waiver services.
12VAC30-120-1550		Day Support Services	Services: Day Support Services, prevocational services and supported employment services: describes the criteria and coverage for these services.
N/A	12VAC30-120-1560		Consumer Directed Model of Service Delivery: describes the criteria and provider qualifications for this service.
N/A	12VAC30-120-2000.		New Section: Transition coordinator; defines and describes requirements for receiving this service.
N/A	12-VAC30-120-2010		New Section: Transition services; defines and describes requirements for receiving this service.