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## Final Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12VAC30 Chapter 120,
<b>Regulation title</b>	Waiver Services
<b>Action title</b>	Individual and Family Developmental Disability Support (IFDDS) Waiver
<b>Document preparation date</b>	7/11/2003; GOV APPROVAL NEEDED BY AUG 5 <sup>TH</sup>

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Individual and Family Developmental Disability Support Waiver (IFDDS) provides community-based services to individuals with developmental disabilities, ages six and older, who do not have a diagnosis of mental retardation. These individuals have 'related conditions,' as defined at 42 CFR § 435.1009. The covered services in this waiver are: in-home residential support; day support; supported employment; prevocational services; therapeutic consultation; environmental modifications; personal care; respite care; consumer-directed attendant, companion care, and respite care; family/caregiver training; skilled nursing; Personal Emergency Response Systems; assistive technology; crisis stabilization; and companion care (agency-directed model).

Currently children, who are younger than six years of age and at risk of developmental delay, receive community-based services under another community-based services program called the

Mental Retardation (MR) waiver. However, once these children attain their sixth birthday and are not diagnosed with mental retardation, they are no longer eligible for MR waiver services.

These suggested final regulations recommend that the change contained in the initial emergency regulations and the proposed stage regulations become permanent. This change provides that these children, once they reach their sixth birthday, may automatically transfer over to the IFDDS waiver program, from the MR waiver, with little to no interruption in community-based services coverage. A timely completion of the review and approval of these final regulations will enable the permanent regulations to become effective as the current emergency regulation expires on September 30, 2003.

**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 Regulatory Review Summary with the attached amended regulations 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. I hereby certify that these regulations are full, true, and correctly dated.

July 11, 2003

/s/ Patrick W. Finnerty/cbj

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.*

*If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

The 2002 *Acts of the Assembly*, Chapter 899, item 325.W stated:

“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 complied with this directive by promulgating emergency regulations, effective October 1, 2002, that permitted the automatic transfer of the eligible MR-waiver children at their sixth birthday.

### 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 it 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 purpose of this action is to promulgate changes to the regulations for the IFDDS waiver program to permit the automatic transfer of certain children, who have been eligible for MR waiver services, but who do not have diagnoses of mental retardation, and who have reached their sixth birthday. This regulatory action is essential to protect the health and welfare of these children having been served in the MR waiver, to automatically transfer in the IFDDS waiver ensuring their community service needs continue to be met.

### 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 regulations affected by this action are the Individual and Family Developmental Disabilities Support (IFDDS) Waiver regulations, at 12 VAC 30-120-700 through 120-720.

The Mental Retardation (MR) Waiver provides home and community based services for individuals who have been determined to meet the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) and who are either diagnosed with mental retardation or are younger than the age of six who are at developmental risk. Once these children without a diagnosis of mental retardation reach the age of 6 years old, they are no longer eligible for services from the MR Waiver. In order to ensure that the service needs of these children continue to be met, the regulations are necessary to allow the children to transfer to the IFDDS Waiver to receive home and community based services. The regulations describe the eligibility requirements for these children and briefly describe the transfer process.

## 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.*

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Prior to the adoption and implementation of the current emergency regulations, children, who did not have specific diagnoses of mental retardation and reached their sixth birthday, were discharged from the Mental Retardation waiver program. Since these children and their families may need home and community based waiver services for these children's entire lives, such discharges may cause inordinate stress on both the children and their families.

The primary advantage to the public and the Commonwealth is that these children will continue to receive home and community based services that allow them to stay in their home or community setting. Without the continuity of services, these young children risk institutional placements in order for their service needs to be met. Lack of available services can put undue stress on families caring for these children with serious service needs. This continuity of service provision is vital to supporting the family unit and the child's developmental process.

DMAS does not anticipate any disadvantages to the public or the Commonwealth. This programmatic change was specifically requested by the affected community and other interested persons.

## 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.*

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Other than the removal of an incorrect citation to a related regulation in the definition of case manager, there are no changes of substance suggested to the text since the publication of the proposed regulations.

## Public comment

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

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<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Endeppendence Center, Inc.	The Endeppendence Center Inc. states the following: “The regulations should allow individuals who are now receiving Mental Retardation Waiver services, but who are determined not to have a diagnosis of mental retardation in the future, to move from the MR Waiver to the IFDDS Waiver regardless of when their sixth birthday occurred.” The Endeppendence Center, Inc. recommends inserting “and older” after “who are six years of age” in the first sentence of the new language in 12VAC30-120-710A.	Currently, individuals on the MR Waiver who do not have a diagnosis of mental retardation and are over the age of six must be discharged from the MR Waiver. These individuals each have an assigned case manager whose responsibility it is to coordinate linkages to other community resources and supports while protecting the health and safety of the individual.  DMAS will take this recommendation into consideration for further study. However, this would increase the budget for this waiver and would require additional appropriations from the General Assembly.

**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.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12VAC30-120-700 Definitions	NA	NA	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	NA	NA	Insert the following: “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.

<p>waiver services.</p>			<p>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.” This is required in order to comply with the 2002 Virginia General Assembly Appropriation Act.</p>
<p>12VAC30-120-720.B.3</p>	<p>NA</p>	<p>NA</p>	<p>Insert the following: “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 completed no more than one year prior to the child’s sixth birthday that determines no diagnosis of mental retardation exists.” This is required in order to comply with the 2002 Virginia General Assembly Appropriation Act.</p>
<p>12VAC30-120-720.B.4</p>	<p>NA</p>	<p>NA</p>	<p>Insert the following: “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. “ This is required in order to comply with the 2002 Virginia General Assembly Appropriation Act.</p>
<p>12VAC30-120-720.E.1 Recipient qualification and eligibility requirements; intake process.</p>	<p>NA</p>	<p>NA</p>	<p>Insert the following: “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 other MR Waiver related documentation within ten calendar days to the selected support coordinator.”</p>

			This is required in order to comply with the 2002 Virginia General Assembly Appropriation Act.
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**Impact on family**

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

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