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Final Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC30-120
Regulation title	Waiver Services: Home and Community Based Services Mental Retardation Waiver
Action title	MR Waiver Renewal
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.

The Department of Medical Assistance Services (DMAS) was directed by the 2004 Virginia Appropriation Act to renew the Mental Retardation (MR) Waiver by submitting a home and community-based waiver application to the Centers for Medicare and Medicaid Services (CMS). DMAS formed a MR Waiver Advisory Committee consisting of family members, advocates, providers, and state agencies to assist with completing the renewal process. The final regulations reflect the changes to the MR Waiver Application as approved by CMS in July 2004. In general the changes include: reorganization of individual eligibility section to present information in chronological order; clarification of definitions, service descriptions and limitations, and individual eligibility and provider requirements; revision of criteria for crisis stabilization and the due date for submission of paperwork for preauthorization; change in the limit for individual models of supported employment to reflect an accurate limit for hourly units; clarification of education requirements for providers of day support, prevocational, and supported employment services; and, the addition of definitions of center-based and non-center-based services under prevocational services and criteria for prevocational services at an intensive level.

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 12VAC30-120-211 through 12VAC30-120-249 and adopt the action, Home and Community Based Services Mental Retardation Waiver, 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. 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.

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 regulatory action is to conform the agency's regulations to recent federally approved changes to this waiver program that have resulted from the federally required waiver renewal process. This program provides supportive services in the homes and communities to persons with diagnoses of mental retardation or children younger than the age of six years who are at risk of developmental delay. This program permits these individuals to remain in their homes and communities rather than being institutionalized in Intermediate Care Facilities for the Mentally Retarded. All federal home and community based waiver programs must be renewed every five years as required by federal law.

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 sections of the regulations affected by this action are: 12VAC30-120-211 through 12VAC30-120-249.

DMAS formed a MR Waiver Advisory Committee consisting of family members, advocates, providers, and state agencies to assist with completing the renewal process. The MR Waiver Advisory Committee recommended changes to the waiver based on their experiences and input from others they represented. The waiver application submitted to CMS reflected these recommendations as agreed to by DMAS and DMHMRSAS.

The original MR Waiver application expired on September 15, 2004. In an effort to streamline processes and make all of Virginia's waivers operate on a state fiscal year, Virginia submitted a request to CMS with this renewal to make the renewal date effective July 1, 2004. CMS approved the renewal of this waiver and completed its review of the MR Waiver in July 2004. The renewal included required changes to the MR Waiver that were included in the emergency and proposed permanent regulations and will be completed in the final regulatory process.

In general, regulation changes made to mirror the waiver application renewal include the following:

1. Added language to clarify the definitions of companion services and environmental modifications and changed the definition of "facilitator" to "services facilitator."
2. Added language regarding the transfer of children enrolled in the MR Waiver to the IFDDS Waiver who reach the age of six but do not have a diagnosis of mental retardation.
3. Revised the situations that are considered at-risk for crisis stabilization services.
4. Added language to clarify that crisis supervision is a component of crisis stabilization.
5. Changed the due date for submission of the crisis stabilization individual service plan to the Department of Mental Health, Mental Retardation, Substance Abuse Services (DMHMRSAS) to within 72 hours of "the requested start date of authorization."
6. Clarified that direct care staff of personal care/respite care agencies and DMHMRSAS licensed services must pass a DMHMRSAS approved test.
7. Added language clarifying when modifications to an individual's work site may be approved to the service description of environmental modifications.
8. Added definitions of center-based and non center-based prevocational services.
9. Define criteria for receiving prevocational services at the intensive level.
10. Changed the service description of nursing to indicate that the services to be offered through skilled nursing must be those that do not meet the home health criteria. In addition, skilled nursing through the waiver may be used as consultation for nurse delegation as appropriate and oversight of direct care staff as appropriate.
11. Revised the limit of individual supported employment in recognition that the service is delivered in hourly units.
12. Reorganized 12 VAC 30-120-215 to present information in chronological order.

13. Combined the personal care and respite sections as requirements are similar.
14. Included information on the consumer-directed option under companion services and the personal assistance and respite services sections. Previously, this information had been included in a separate section.

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.

The primary advantage of these regulations is that they allow individuals with mental retardation to live as independently as possible in the community by providing to individuals services in their homes and communities rather than an institution. The changes in this regulation seek to improve the operations of the program by providing further clarification on available services and the necessary requirements to provide for the health, safety, and welfare of the individuals receiving services.

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.

DMAS made changes described below based upon both public comment and the Agency's desire to align particular services that are similar in other waivers. The following changes are being made in the final regulation.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
12VAC30-120-211; 120-223 (D)(2)(d); 120-225 (B)(7)	References to Va. Code 37.1-242 concerning definition of CSB and BHA; References to Va. Code 37.1-183.3 concerning barrier crimes	These references were corrected to 37.2-100 and 37.2-416.
12VAC30-120-211	No definition of "primary caregiver"	Add definition of "primary caregiver"
12VAC30-120-211 through 12VAC30-120-249	References to "individual or family caregiver" and "individual and family/caregiver" References to "service facilitation" and "service facilitator"	All instances were replaced with "individual, and their family/caregiver, as appropriate" All instances were replaced with "services facilitation" and "services facilitator"
12VAC30-120-213 (A)(2)	Psychological evaluations confirming diagnoses must be completed less than one year prior to transferring to the IFDDS Waiver.	Psychological evaluations [(or standardized developmental assessment for children under six years of age)] confirming diagnoses must be completed less than one year prior to transferring to the IFDDS Waiver.

12VAC30-120-213 (E)(1)	"The urgent category will be assigned when the individual is in need of services because he is determined to meet one of the criteria established in subdivision 2 of this subsection."	Add "and services are needed within 30 days" to enhance clarity of the urgent criteria.
12VAC30-120-215 (B)(2)(d) and 12VAC30-120-213(A)(2)	"a psychological evaluation that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals."	"a psychological evaluation [or standardized developmental assessment for children under six years of age] that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals."
12VAC30-120-215 (B)(4) and 120-219 (I)	References time frame for notification of decisions to the individual and their family/caregiver, when appropriate	Time frame will be 10 business days.
12VAC30-120-215 (C)(4)	Only [MR Waiver] services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.	Only [MR Waiver] services authorized on the CSP by DMHMRSAS according to DMAS policies [~~will~~ may] be reimbursed by DMAS.
12VAC30-120-215 (C)(5)	References the time frame in which services will be initiated	"DMHMRSAS has the authority to approve the request in 30-day extensions [, up to a maximum of four consecutive extensions,] or deny the request to retain the waiver slot for that individual.
12VAC30-120-215 (C)(5) through (C)(8)	Concerning waiver approval process: authorizing and accessing services	Move language at (C)(5) to follow language at (C)(8) and renumber to clarify chronology
12VAC30-120-217 (A)(12)	"A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, the data is necessary for the functioning of the DMAS in conjunction with the cited laws;"	"A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits [or]~~,~~ the data is necessary for the functioning of the DMAS in conjunction with the cited laws;"
12VAC30-120-217 (B)(2)(c)	"An attendance log that documents the date services were rendered and the amount and type of services rendered."	Strike "An attendance log that documents" and insert "Documentation of" to reflect the broader nature of documentation because not all providers maintain attendance logs, per se.
12VAC30-120-219 (F)	A provider shall have the right to appeal adverse action taken by DMAS.	This sentence was deleted as unnecessary.
12VAC30-120-223 (C)(3)	No more than two unrelated individuals who live in the same home are permitted to share the authorized work hours of the companion.	No more than two unrelated individuals who [are receiving waiver services and] live in the same home are permitted to share the authorized work hours of the companion.
12VAC30-120-223 (D)(1)(a)	References the type of licenses issued by DMHMRSAS	"Agency-directed model: Must be licensed by DMHMRSAS as a residential service provider, supportive [in-home] residential service provider…"
12VAC30-120-223(D)(2)(e), (f) & (g)	References to companion qualifications	e. Possess a valid Social Security number; and f. Be capable of aiding in instrumental activities of daily living~~.~~[; and] Add qualification at (g) Receive an annual tuberculosis (TB) screening.
12VAC30-120-223(D)(2)(d)	Companion must submit to a criminal records check within five days of date of employment.	Five day deadline changed to 15 day deadline.
12VAC30-120-223 (D)(3)	"Companion services shall not be provided by adult foster care/family care providers or any other paid caregivers."	"Companion services shall not be provided by adult foster care~~/family care~~ providers or any other paid caregivers [for an individual residing in that home].

12VAC30-120-223 (D)(3)	"This service shall not be provided in congregate settings by staff employed by the congregate provider."	~~"This service shall not be provided in congregate settings by staff employed by the congregate provider."~~
12VAC30-120-223 (D)(7)(i)	"Consumer-directed model companion record. In addition to the above requirements, the companion record for service facilitation providers must contain:"	"Consumer-directed model companion record. In addition to the above requirements [outlined in 12VAC30-120-223 (D)(7)(a-g)], the companion record for [~~service facilitation providers~~ services facilitators] must contain:"
12VAC30-120-225 (A)(4)	References the time frame that constitutes a lapse in services facilitation and a discontinuation of consumer-directed services	Change the requirement from sixty to ninety days for CD services to be reviewed by a services facilitator to align with the requirement that services are monitored at least quarterly.
12VAC30-120-225 (B)(4)(a)	"The initial comprehensive home visit is done only once upon the individual's entry into the service consumer-directed models of service regardless of the number of consumer-directed models of services that an individual chooses to receive."	"The initial comprehensive home visit is done only once upon the individual's entry into ~~the service~~ [the] consumer-directed [~~models~~ model] of service regardless of the number [or type] of consumer-directed [~~models of services~~] that an individual chooses to receive."
12VAC30-120-225 (B)(4)(b)	"After the initial visit, the CD services facilitator will continue to monitor the companion or assistant ISP quarterly and on an as-needed basis."	"After the initial visit, the CD services facilitator will continue to monitor the companion or [personal] assistant ISP quarterly and on an as-needed basis."
12VAC30-120-225 (B)(7)	Requirement to request criminal history and DSS/CPS check	The time limit for the request was changed from 5 to 15 days to align with the DMHMRSAS licensing regulations. Also added in is the sentence, "The services facilitator must maintain evidence that a criminal record check was obtained and must make such evidence available for DMAS review."
12VAC30-120-227 (D)(1) and 120-227 (D)(2)	References the type of licenses issued by DMHMRSAS to providers	Clarify that license is issued for "supportive [in-home] residential services
12VAC30-120-229 (E)	"Service providers are reimbursed only for the amount and ~~type of~~ level 1 day support services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered." References service delivered in combination with supported employment.	Correct typo – "Service providers are reimbursed only for the amount and ~~type of~~ level ~~1~~ [of] day support services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered." Clarifying type of supported employment: "…prevocational and [/or group] supported employment services…"
12VAC30-120-229 (F)(3)	"The provider agency must maintain records …"	"The provider [~~agency~~] must maintain records …"
12VAC30-120-229 (F)(3)(b)(2); 120-237 (D)(3)(b)(2) and 120-241 (D)(4)(b)(2)	References the individual service plan	Each instance changed to read: "The individual's goals and[~~, for a training goal, aequence of~~] measurable objectives…"
12VAC30-120-233 (B)(2)	"Respite services may only be offered to individuals who have an unpaid primary caregiver living in the home who requires temporary relief to avoid institutionalization of the individual."	"Respite services may only be offered to individuals who have an unpaid primary caregiver [~~living in the home~~] who requires temporary relief to avoid institutionalization of the individual."
12VAC30-120-233 (C)(4)	References the adult foster care service terminology used by Department of Social Services	Strike "/family care"

12VAC30-120-233 (D)(1)(b)	For consumer-directed model, a service facilitation provider …	For consumer-directed model, a [~~service facilitation provider~~ services facilitator]
12VAC30-120-233 (D)(5)(b)	"However, the supervisor must …"	"However, the supervisor [or services facilitator] must …"
12VAC30-120-233 (D)(7)(a)(2)	References qualifications for assistants of personal and respite care	Add "be able to read and write English and possess basic math skills."
12VAC30-120-233 (D)(7)(c)(4)	Receive an annual tuberculosis (TB) screening, cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contraindicated).	The personal care provider is still required to receive annual tuberculosis (TB) screening, but the requirements for cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contraindicated) were deleted from the regulation.
12VAC30-120-233 (D)(10)(c)	References requirement for quarterly reviews by the supervisor or services facilitator	Specify that quarterly review is only necessary for personal assistance
12VAC30-120-233 (D)(10)(g)	"Contacts made with family/caregivers …"	"Contacts made with [the individual,] family/caregivers …"
12VAC30-120-233 (D)(10)(h)	"The provider must clearly document …"	"The provider [or services facilitator] must clearly document …"
12VAC30-120-233 (D)(10)(i)	"For the agency-directed model, all assistant records. The assistant records must contain:"	"For the agency-directed model, ~~all assistant records.~~ ~~T~~[t]he assistant records must contain:"
12VAC30-120-233 (D)(10)(j)	"For the consumer-directed model:"	"For the consumer-directed model[, the assistant record must contain]:"
12VAC30-120-233 (D)(2)	"For DMHMRSAS-licensed residential or respite services providers, a residential supervisor will provide ongoing supervision of all assistants."	"For DMHMRSAS-licensed residential or respite services providers, a residential [or respite] supervisor will provide ongoing supervision of all assistants."
12VAC30-120-233(D)(10)(j)/(k)	Replacing current subsection (j) and re-designating subsection (j) as subsection (k)	Added a new subsection as follows: j. For individuals receiving personal and respite services in a congregate residential setting, because services that are training in nature are currently or no longer appropriate or desired, the record must contain: (1) the specific services delivered to the individual, dated the day services were provided, the number of hours as outlined in the ISP, the individual's responses, and observations of the individual's physical and emotional condition; (2) at a minimum, monthly verification by the residential supervisor of the services and hours and quarterly verification as outlined in 12VAC30-120-241.
12VAC30-120-237 (C)	References the combination of prevocational services with day support and supported employment	"If this services is used in combination with day support and[/or] group supported employment services…"
12VAC30-120-245 (A)	Reference to "home health criteria"	Reference moved to end of sentence for clarity
12VAC30-120-247 (B)(2)	"In order to qualify for these services…without ongoing supports, and who because of his disability, needs ongoing support to perform in a work setting."	"In order to qualify for these services…without ongoing supports, and ~~who~~ [that] because of his disability, [he] needs ongoing support to perform in a work setting."
12VAC30-120-247 (C)(2)	"If used in combination with..."	"If [this service is] used in combination with…"
12VAC30-120-	"A written support plan detailing the	"A written support plan detailing the recommended

249 (D)(2)	recommended interventions or support strategies."	interventions or support strategies [for providers and family/caregivers to use to better support the individual in the service]."
12VAC30-120-249 (D)(6)	"A written support plan, detailing the interventions and strategies for providers and family/caregivers to use to better support the individual in services; and"	Delete entire sentence to avoid duplication already outlined in 12VAC30-120-249 (D)(2).

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 November 28, 2005, *Virginia Register* for their public comment period from November 28, 2005 through January 27, 2006. Public comments were as follows:

The Agency received identical comments from the **Virginia Network of Private Providers** ("The Network") in Richmond, Virginia and the **Virginia Association of Community Services Boards' Mental Retardation Council** (MR Council). The Network and the MR Council requested that DMAS correct references to the Virginia Code changed effective October 1, 2005.

The Network and the MR Council requested that all references to "individual **or** family caregiver" and "individual **and** family/caregiver" be deleted and replaced with "individual, and their family/caregiver, as appropriate…" The Network and the MR Council expressed concern that it is important to always identify the individual as the person to be involved in the planning or decisions about his/her care.

The Network and the MR Council requested that provider qualifications for personal assistance/respite supervisors at 12 VAC 30-120-233 (D)(2) be the same as the qualifications for companion supervisors at 12 VAC 30-120-223 (D)(5).

The Network and the MR Council requested that initial home visits for companion services be completed by "the provider or services facilitator" at 12 VAC 30-120-223 (D)(6) rather than "the supervisor or services facilitator."

The Network and the MR Council requested that the requirement for criminal history and DSS/CPS checks to be completed in a specific time frame be aligned with requirements outlined in section 37.2 of the Code of Virginia. The Network and the MR Council suggested that the request be submitted within 15 days of employment rather than 5 days.

The Network and the MR Council requested removal of the requirement that the arrival and departure times of personal assistant's be recorded and that the assistant's and individual's or family/caregiver's signature be recorded weekly to verify service delivery [12 VAC 30-120-233 (D)(10)(i)(2) & (4)]. Supporting comments on this particular suggestion were also received from the **Cumberland Mountain Community Services Board.**

The Network and the MR Council requested that the requirement for reimbursement "only for residential support services provided when the individual is present and when a qualified provider is providing services" be deleted at 12 VAC 30-120-241 (C)(5).

DMAS Response: Concerning Virginia Code citations made effective October 1, 2005, DMAS will change all references as appropriate.

Concerning The Network's and the MR Council's request to change all references to "individual, and their family/caregiver, as appropriate…," DMAS agrees that the individual must be involved in the planning or decisions about his/her care. DMAS is changing all such references to reflect this person-centered principle.

Regarding The Network's and the MR Council's request to align provider qualifications for personal assistance/respite supervisors with those of companion supervisors, DMAS will add the following language to 12 VAC 30-120-223 (D)(5):

> "The supervisor must have a bachelor's degree in a human services field and at least one year of experience working in the mental retardation field, or be an LPN or a RN with at least one year experience working in the mental retardation field. An LPN or RN must have a current license or certification to practice nursing in the Commonwealth within his profession."

Concerning The Network's and the MR Council's request to have initial home visits for companion services be completed by "the provider or services facilitator" at 12 VAC 30-120-223 (D)(6), DMAS declines to make this change because the reference to provider is not specific enough.

Regarding The Network's and the MR Council's request to have the time frame for criminal history and DSS/CPS checks be completed within 15 days of employment, DMAS is changing 12 VAC 30-120-225 (B)(7) to state:

> "The criminal record check and DSS Child Protective Services Central Registry finding must be requested by the CD services facilitator within 15 calendar days of employment and obtained within 30 calendar days of employment. The CD services facilitator must maintain evidence that the criminal record check was obtained and must make such evidence available for DMAS review."

Concerning the request by The Network, the MR Council, and the Cumberland Mountain CSB to remove the requirements at 12 VAC 30-120-233 (D)(10)(i)(2) & (4), DMAS re-designated a subsection so that individuals can receive personal assistance in a congregate residential setting because services that are training in nature are currently or no longer appropriate or desired.

Regarding The Network's and the MR Council's request to delete the requirement for reimbursement "only for residential support services provided when the individual is present and when a qualified provider is providing services" be deleted at 12 VAC 30-120-241 (C)(5), DMAS declines to make this change because this requirement allows DMAS to assure that the costs of waiver services are based on state payments for waiver services that have been rendered to

waiver participants, authorized in the service plan, and properly billed by qualified waiver providers in accordance with the approved waiver.

The **Partnership for People with Disabilities at Virginia Commonwealth University** (the Partnership) provided comments to the Agency on the MR Waiver proposed permanent regulations. The Partnership pointed out because of the emphasis on seeking increased involvement of individuals with disabilities, person-centered planning "words" and concepts should appear in the regulations. Mention could/should be added in several places, two places being (1) in the definition of case management (page 2) and (2) in the description of the CSP development (pg 27). There are other places, such as the functional assessment and development of ISPs where person-centered planning knowledge and skills would increase the individual's (and family, when needed) involvement in service planning and implementation. The Partnership further indicated that the new waiver application from CMS has greater emphasis on individual involvement: (Participant-Centered Service Planning and Delivery: services and supports are planned and effectively implemented in accordance with each participant's unique needs, expressed preferences and decisions concerning his/her life in the community.)

DMAS Response: The Agency has made many enhancements to the regulations that reflect person-centered planning. Due to the legal nature of these regulations, DMAS has made as many person-centered references as possible.

The Agency also received comments from the **Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services' Office of Mental Retardation** (The OMR). The OMR suggested that requirements for placement on the urgent care waiting list be clarified to say that services are needed within 30 days.

The OMR suggested that income exclusions for individuals working between 8 and 20 hours be changed to say "fewer" than 20 hours. The OMR points out that the lower limit of eight hours per week is often financially detrimental to those working in sheltered employment or receiving prevocational services whose work hours are sporadic and limited.

The OMR requested that language be inserted at 12 VAC 30-120-215 (B)(2)(d) that clarifies "a psychological evaluation **or standardized developmental assessment for children under six years of age…"** The rationale being that children under six are typically too young for a psychological evaluation and this has been the alternative for them since the MR Waiver's inception.

The OMR suggested that the number of days a case manager has to notify an individual of placement on the waiting list or the decision to reduce, terminate, suspend or deny services be consistent – either 10 or 12 days.

The OMR requested that a sequence change be made at 12 VAC 30-120-215 (C) to reflect the assessment and start of waiver services. It was suggested that item #5 follow item #8.

The OMR discovered a grammatical correction needed at 12 VAC 30-120-217 (A)(12) and suggested that "or" be inserted after "…used in conjunction with a claim for health benefits…"

The OMR suggested that the following change be made at 12 VAC 30-120-217 (B)(2)(c): "~~An attendance log that documents~~ **Documentation of** the date services were rendered…" The OMR's rationale is that all services providers do not maintain an attendance log, which is a

document mainly required of day support, prevocational, and supported employment service providers. The OMR points out that all providers must verify that the individual received services on any given day for which the provider bills and that the suggested language change will make the regulations reflect a broader nature of documentation.

The OMR requested that regulatory language be clarified to reflect that supportive residential services licenses are "in-home" in nature. There are three citations associated with this suggestion: 12 VAC 30-120-223 (D)(1)(a), 12 VAC 30-120-227 (D)(1) and 12 VAC 30-120-227 (D)(2).

The OMR suggested that language be inserted to require companion care providers be required to receive an annual tuberculosis (TB) screening to be consistent with the requirements for respite and personal care attendants.

The OMR requested that language be deleted from the regulations that prohibit companion services from being delivered by staff employed by the congregate residential provider. The OMR's rationale is that the prohibition has necessitated an outside provider deliver the services which creates unnecessary inflexibility in the MR Waiver. OMR suggests that deleting this prohibition will result in a cost savings for DMAS because congregate residential providers could deliver the services at the lower companion rate rather than the more costly group-home residential rate.

The OMR suggests that companion services language be aligned with current terminology used by the Department of Social Services when referring to foster care providers. The OMR further suggests that this same regulation cite be clarified to say that the adult foster care providers cannot deliver companion services to individuals residing in the home of the provider.

The OMR identified grammatical corrections at 12 VAC 30-120-223 (D)(7)(f)(5) and suggested that text should read: "Any suspected abuse, neglect, or exploitation and **to** ~~who~~ **whom** it was reported ~~to~~;".

The OMR suggested that language by inserted to clarify the type of documentation required for consumer-directed services. The suggested language would read "Consumer-directed model companion record. In addition to the ~~above~~ requirements **outlined in 12 VAC 30-120-223 (D)(7)(a-g),** the companion record for services facilitation providers must contain…"

The OMR suggested that consumer-directed services be discontinued if there has been a lapse in services facilitation for more than 90 days rather than 60 days. The OMR's rationale for this suggestion is that CD services are required to be reviewed no more often than quarterly and that individuals directing their own care will often go 90 days without contact from a services facilitator. The lengthened time frame will also allow individuals a reasonable period in which to find a replacement services facilitator.

The OMR requested that clarifying language be inserted to require that CD services facilitators monitor the ISP of the companion or **personal** assistant on a quarterly basis.

The OMR discovered a typographical error at 12 VAC 30-120-229 (E). The language should read "Service providers are reimbursed only for the amount and level ~~1~~ **of** day support services…" At the same regulatory cite, the OMR suggests that language be inserted to clarify

that supported employment referenced here should be of the group model. This suggested language would be consistent with another section of the regulations.

The OMR suggests that several regulatory references be changed to reflect that ISPs contain the goals and measurable objectives for an individual, rather than a training goal and sequence of objectives. This change is suggested for 12 VAC 30-120-229 (F)(3)(b)(2), 12 VAC 30-120-237 (D)(3)(b)(2), 12 VAC 30-120-241 (D)(4)(b)(2), and 12 VAC 30-120-247 (D)(2)(c)(2).

The OMR suggests that respite services language be aligned with current terminology used by the Department of Social Services when referring to adult foster care providers.

The OMR requested that clarifying language be inserted at 12 VAC 30-120-233 (D)(2) that reads "…for DMHMRSAS-licensed residential or respite services providers, a residential **or respite** supervisor will provide ongoing supervision of all assistants."

The OMR suggested that provider requirements for agency-directed and consumer-directed care be the same and requested that 12 VAC 30-120-233 (C)(7)(b) read "…possess basic math, reading, and writing skills."

The OMR requested that requirements for consumer-directed care assistants be equivalent to those in other waivers. The specific request is to remove the requirement that care attendants receive CPR training and flu shots.

The OMR suggested that language be added to specify that quarterly reviews by the services facilitator are only required for personal assistance services, because respite services are often sporadic in nature.

The OMR discovered a typographical error at 12 VAC 30-120-233 (C)(10)(i). It should read "For the agency-directed model, the assistant record must contain:".

The OMR suggested that **"…the assistant record must contain…"** be added at 12 VAC 30-120-233 (C)(10)(j) to achieve consistency with the previous line at (i).

To enhance clarity, the OMR suggested that **"or"** be added before "…group supported employment services…" at 12 VAC 30-120-237 (C).

The OMR discovered a grammatical error at 12 VAC 30-120-247 (B)(2) and suggested the following text: "In order to qualify for these services…and ~~who~~ **that** because of his disability, **he** needs ongoing support…"

To enhance clarity, the OMR suggested the following change at 12 VAC 30-120-247 (C)(2): "If **this service is** used in combination with prevocational and**/or** day support services…"

The OMR requested that DMAS remove the prohibition for therapeutic consultation providers to bill for travel time, written preparation, and telephone communication. The rationale is that these types of services are typically billed for by professionals and consultants. The OMR further remarked that MR Waiver Therapeutic Consultation providers are few in number and the inability to bill for travel and phone consultation has been a barrier to provider development and service delivery.

To further clarify the nature of the support plan, the OMR suggested that 12 VAC 30-120-249 (D)(2) read: "A written support plan detailing the recommended interventions or support strategies **for providers and family/caregivers to use to better support the individual in the service."**

The OMR suggested that duplicative language be deleted at 12 VAC 30-120-249 (D)(6).

DMAS Response: Concerning clarification of urgent care waiting list requirements, DMAS will include language that specifies "…and services are needed within 30 days to avoid institutionalization" at 12 VAC 30-120-213 (E)(1).

Regarding the request to change language related to income exclusions, DMAS declines to make the suggested change in that it represents a fiscal impact for which there is no appropriation.

Concerning the OMR's request to clarify the type of assessment instrument used for children under the age of six, DMAS will insert the suggested language.

Regarding the OMR's suggestion to be consistent in the number of days case managers have to notify individuals of waiting list placement or decision to reduce, terminate, suspend or deny services, DMAS will make a change to reflect **10 business** days at 12 VAC 30-120-215 (B)(4) and 12 VAC 30-120-219 (I).

Concerning the OMR's request to move item #5 after item #8 at 12 VAC 30-120-215 (C), DMAS will incorporate the suggested sequencing change.

Regarding the OMR's suggested insertion of "or" at 12 VAC 30-120-217 (A)(12), DMAS will make this correction.

Concerning the OMR's suggestion to make regulations reflect a broader range of documentation required of providers to demonstrate service delivery, DMAS accepts the recommended change in language.

DMAS will make the language change suggested by the OMR to clarify that supportive residential services licenses are "in-home" in nature.

At 12 VAC 30-120-223 (D)(2), DMAS will add an item (g) to include the requirement that companion care providers receive an annual tuberculosis (TB) screening.

Concerning the OMR's suggestion to allow companion services to be delivered by congregate residential services staff, DMAS will strike language at 12 VAC 30-120-223 (D)(3) that reads "This service shall not be provided in congregate settings by staff employed by the congregate provider."

Regarding the OMR's request to align companion services references to adult foster care with current terminology used by DSS and to prohibit adult foster care providers for delivering companion services to individuals living in the home of the provider, DMAS will reflect the suggested changes at 12 VAC 30-120-223 (D)(3).

DMAS agrees to the grammatical correction suggested by the OMR at 12 VAC 30-120-223 (D)(7)(f)(5) and will make such change.

Concerning the OMR's request to clarify the documentation required for consumer-directed services, DMAS will insert the suggested language at 12 VAC 30-120-223 (D)(7)(i).

DMAS agrees that the time frame for services facilitation contact in order to maintain CD services should be extended to 90 days and will reflect such change at 12 VAC 30-120-225 (A)(4).

At 12 VAC 30-120-225 (B)(4)(b), DMAS will insert the word "personal" to clarify that services facilitators must monitor the ISP of the companion and personal assistants quarterly.

DMAS will correct the typographical error at 12 VAC 30-120-229 (E) and will include the suggested language insertion of "group" to clarify the type of supported employment.

Regarding the OMR's suggestion to delete language so that individual ISP's contain goals and measurable objectives, DMAS will make such changes at the four referenced regulatory citations.

Regarding the OMR's request to align companion services references to adult foster care with current terminology used by DSS, DMAS will reflect the suggested change at 12 VAC 30-120-233 (C)(4).

Regarding the OMR's request to insert clarifying language at 12 VAC 30-120-233 (D)(2), DMAS will make the suggested change.

Concerning the OMR's suggestion that provider requirements for agency-directed and consumer-directed care be the same, DMAS will change the language at 12 VAC 30-120-233 (C)(7)(b) to read "…be able to read and write English and possess basic math skills." References to the different models of care direction will be removed.

Regarding the OMR's request that requirements for consumer-directed care assistants be made similar to those in other waivers, DMAS will remove the requirement for CPR training and flu shots.

Concerning the OMR's suggestion that language be added to specify that quarterly reviews by the services facilitator are only required for personal assistance services, DMAS will add (**for personal assistance only)** after "…quarterly…" at 12 VAC 30-120-233 (c)(10)(c).

Regarding the typographical error at 12 VAC 30-120-233 (C)(10)(i), DMAS will make the correction.

Concerning the OMR's suggestion to add **"…the assistant record must contain…"** at 12 VAC 30-120-233 (C)(10)(j), DMAS will incorporate the proposed change.

DMAS agrees with the OMR's suggestion to enhance clarity, at 12 VAC 30-120-237 (C) by adding **"or"** before group supported employment services.

Regarding the grammatical error at 12 VAC 30-120-247 (B)(2), DMAS will make the suggested change.

Concerning the OMR's suggestion to enhance clarity at 12 VAC 30-120-247 (C)(2), DMAS will make the suggested change.

Regarding the OMR's request to remove the prohibition for therapeutic consultation providers to bill for travel time, written preparation, and telephone communication, DMAS declines to make such a change at this time.

DMAS agrees to further clarify the nature of the support plan by changing 12 VAC 30-120-249 (D)(2) to read: "A written support plan detailing the recommended interventions or support strategies **for providers and family/caregivers to use to better support the individual in the service."**

Concerning the OMR's suggestion to remove duplicative language at 12 VAC 30-120-249 (D)(6), DMAS will delete the sentence.

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.

The chart below details all of the previous changes made to the regulatory text.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-120-211	Not applicable (N/A)	Definitions	(1)The definition of "facilitator" was revised to "service facilitator" to provide clarity and guidance to providers and other stakeholders. (2) The following definitions were modified in the proposed permanent regulation: A) The definition of companion was revised to provide clarification that all types of hands-on care not just nursing care is prohibited by this service. B) Language was added to the definition of environmental modifications to clarify conditions when an individual's work site can be modified. C) "Consumer-Directed Services" was changed to Consumer-Directed Option as

			consumer-direction is an option for several MR Waiver services and not a separate service D) A definition for Health Planning Region was added at the suggestion of the OAG. E) Language was added to further clarify the health and safety standard.
12VAC30-120-213	N/A	General coverage and requirements for MR waiver services	(2) The following language was added in the proposed permanent regulation: A) Added language regarding the transfer of children enrolled in the MR Waiver who reach the age of six but do not have a diagnosis of mental retardation to the IFDDS waiver to be consistent with the CMS approved applications for these programs. B) Added language regarding the restriction against waiver services being provided to residents of institutions. This language was moved from 12VAC30-120-215B at the recommendation of the OAG. C) Added welfare to the criteria under which requests for increased services are reviewed at the request of stakeholders. D) Clarified the urgent criteria regarding caregivers at the request of stakeholders. E) Moved the language detailing reevaluation of service need to section 12VAC30-120-215 at the request of stakeholders who requested that information be presented in chronological order for clarity.
12VAC 30-120-215	N/A	Individual eligibility requirements	(1) Added “waiver” before the word services to provide clarity and guidance to providers and other stakeholders. (2) The following changes were made to the proposed permanent regulation to provide stakeholders with greater clarity: A) Changed “inappropriate” to “other” institutional placement. B) Added requirement that case managers contact the individual or family/caregiver at least annually to provide the choice between institutional placement and waiver services while the individual is on the waiting list to be consistent with the CMS approved

			application. C) Added inpatient rehab facility to list of inpatient settings where individuals cannot receive waiver services and moved this language from this section to 12VAC30-120-213B at the recommendation of the OAG. D) Clarified that the case manager must designate a collector of Patient Pay when applicable when the DMAS-122 is updated annually. E) The following information was reorganized to promote clarity at the request of stakeholders who requested that information be presented in chronological order: 1) The comprehensive assessment information was changed to an outline format and includes application of ICF/MR criteria that previously had been listed as a separate item. 2) Section B was renamed "Assessment and Enrollment" 3) Section B1 was expanded to include information previously included in B4. 4) Information contained in B5 – B8 was moved under section C that was renamed authorizing and accessing services. 5) Waiting list information was moved to section B from section C. 6) Information on ISP development was moved prior to extension requests in section C. 7) Information contained in previous sections C5 and C6 were moved under the newly created section D. 8) Language detailing reevaluation of service need was relocated to this section under a newly created section D from 12VAC30-120-213.
12VAC30-120-217	N/A	General requirements for home and community-based participating providers.	(2) The following changes were made to the proposed permanent regulation: A) Revised wording for consistency in language. B) Changed requirement of record retention by providers to six years to be consistent

			with HIPAA requirements.
12VAC30-120-219	N/A	Participation standards for home and community-based waiver services participating providers.	(2) The following language was added to provide clarification in the proposed permanent regulation: (A) Clarified instances when a provider can appeal the termination of the provider agreement by DMAS. (B) Clarified that 72 hours means three business days. (C) Revised the language regarding provider appeals to refer providers to the regulations regarding appeals.
12VAC30-120-221	N/A	Assistive Technology	(2) The following changes were made to the proposed permanent regulation to provide stakeholders with greater clarity: A) Clarified that all assistive technology must be preauthorized. B) Clarified that labor related to assistive technology items may be included under this service and that reimbursement for labor is included in the $5000 limit per CSP. C) Clarified that assistive technology must be provided in the least expensive, most cost-effective manner.
12VAC30-120-223	N/A	Companion services (agency-directed model)	(2) The following changes were made to the proposed permanent regulation to provide clarification to stakeholders and providers: A) Revised section to include both agency-directed and consumer-directed options for this service. Information on companion services provided through the consumer-directed option was moved from 12 VAC 30-120-225 into this section. B) Removed the term “nursing” from criteria as all types of hands-on care are excluded from this service. D) Removed reference to parents of minor children as minor children are not eligible for this service. E) Listed the elements of an ISP.
12VAC30-120-225	N/A	Consumer-directed services: personal assistance, companion, and respite	(1) The following changes were made to provide stakeholders with greater clarity and to make the regulations consistent with the federally approved waiver application for this program: A) Removed the word “companion” when

			referring to the provision of special tasks, as companions are not able to provide assistance with special tasks. B) Added the word "Central" when talking about the Child Protective Registry. C) Identified the provider as "Services Facilitator" when referring to documentation requirements such as quarterly reports. D) Clarified that skilled nursing is a type of consultation that can be requested as needed. E) Text removed from subsection C because it duplicated the same language in subsection B. (2) The following changes were made to the proposed permanent regulation to provide providers and stakeholders with greater clarity: A) Revised the section to include only general information on the consumer-directed model of services and service facilitation provider requirements. B) Specific information on companion services provided through the consumer-directed model was moved to 12VAC30-120-223. C) Specific information on personal assistance and respite services provided through the consumer-directed model was moved to 12VAC30-120-233. D) Clarified that services will discontinue if the individual is without service facilitation services for more than sixty consecutive days. E) Added language to provide further clarification on service facilitation visits.
12VAC30-120-227	N/A	Crisis stabilization services	(1) The following changes were made to provide stakeholders with greater clarity and to make the regulations consistent with the federally approved waiver application for this program: A) Changed the situations that an individual must be in to be considered at risk of needed crisis stabilization services.

			B) Added language to clarify that crisis supervision is an optional component of crisis stabilization. C) Changed the due date of submission of the crisis stabilization individual service plan to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).
12VAC30-120-229	N/A	Day support services	(1) New language clarifies the limit on this service in combination with other services to prevent potential misinterpretation. (2) The following language was added to the proposed permanent regulation to provide clarification to providers: A) Clarified that there are two levels of day support. B) Defined units. C) Further clarified the limit on this service when used in combination with supported employment. D) Clarified education requirements of day support providers. E) Reorganized the provider requirements section.
12VAC30-120-231	N/A	Environmental Modifications	(2) The following changes were made: (A) Removed a statement under section A regarding federal state and local building codes and laws as this statement is included under section D. (B) Clarified the conditions when an individual's worksite may be modified under this service. (C) Provided further clarification on the criteria for environmental modifications.
12VAC30-120-233	N/A	Personal assistance services (agency-directed model)	(1) Renumbered the provider requirements to indicate the requirements apply to both DMHMRSAS licensed and other DMAS enrolled personal care providers to give providers and other stakeholders greater clarity. (2) The following reorganization changes were made to the proposed permanent regulation: A) Respite services were moved from 12VAC30-120-243 into this section as these

			services have similar requirements. B) Revised section to include both agency-directed and consumer-directed options for this service. Information on personal assistance and respite services provided through the consumer-directed option was moved from 12 VAC 30-120-225 into this section.
12VAC30-120-237	N/A	Prevocational services	(1) The following changes were made to give providers and other stakeholders with greater clarity: A) Clarified the definition of center-based and non center-based prevocational services. B) Provided criteria for receiving prevocational services at the intensive level. (2) The following language was added to the proposed permanent regulation to provide clarification to providers: A) Defined units. B) Added language to clarify the limit on this service when used in combination with supported employment. C) Clarified education requirements of prevocational providers. D) Reorganized the documentation section. E) Added language to further clarify documentation confirming an individual's attendance. F) Added language to clarify documentation requirements for intensive services.
12VAC30-120-241	N/A	Residential support services	(1) Clarified that the test direct care staff of licensed providers have to take is "approved" by DMHMRSAS. (2) Removed a statement in the proposed permanent regulation regarding supervision being provided by a DMHMRSAS licensed provider as not all residential providers are licensed by DMHMRSAS.
12VAC30-120-243	N/A	Respite services (agency-directed model)	(1) Renumbered provider requirements to indicate appropriate requirements for both DMHMRSAS licensed providers and providers enrolled with DMAS to give providers and other stakeholders with

			greater clarity. (2) Information contained in this section in the proposed permanent regulation was combined with information on personal assistance located in 12VAC30-120-233 as these services have similar requirements.
12VAC30-120-245	N/A	Skilled nursing services	(1) The following changes were made to give providers and other stakeholders with greater clarity and to make the regulations consistent with the federally approved waiver application for this program: A) Definition of skilled nursing: Skilled nursing services [~~*that do not meet home health criteria*~~] shall be provided for individuals with serious medical conditions and complex health care [who do not meet home health criteria] needs that require specific skilled nursing services that cannot be provided by non-nursing personnel. B) Clarified that skilled nursing services through the waiver, may be used as consultation for nurse delegation and oversight of direct care staff to other providers as appropriate.

12VAC30-120-247	N/A	Supported employment services	(1) Clarified the limitation for individual supported employment to give providers and other stakeholders clarity. (2) The following language was added to the proposed permanent regulation to provide clarification to providers: A) Clarified the limits for individual supported employment that are different than group models as the units for group models of supported employment are calculated differently. Deleted language regarding the limit of this service when used with prevocational and day support services as the units for these services are also calculated differently and cannot be compared. B) Defined units for group models of supported employment. C) Clarified education requirements of supported employment providers. D) Reorganized the documentation section and added requirement that functional assessment be included in the documentation.

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 affect on disposable family income of this change is unknown.