



# COMMONWEALTH of VIRGINIA

*Office of the Attorney General*

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

Mark R. Herring  
Attorney General

## **MEMORANDUM**

**TO:** EMILY MCCLELLAN  
Regulatory Supervisor  
Department of Medical Assistance Services (DMAS)

**FROM:** JENNIFER L. GOBBLE  
Assistant Attorney General

**DATE:** October 19, 2020

**SUBJECT:** Final Regulations – Three Waivers Redesign (Action 4500 / Stage 8631)

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I have reviewed the final regulations posted to Virginia Regulatory Town Hall as of October 8, 2020, that would implement the redesign of three of DMAS' existing home and community-based waivers as approved by the Centers for Medicare and Medicaid Services. The Individual and Family Developmental Disabilities Support Waiver is changing to the Family and Individual Supports Waiver; the Intellectual Disability Waiver is changing to the Community Living Waiver; and the Day Support Waiver for Individuals with Mental Retardation is changing to the Building Independence Waiver.

You have asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the regulations and if they comport with applicable federal and state law. It is this Office's view that the Director of the Department of Medical Assistance Services, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to promulgate the final regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act (VAPA), and has not exceeded that authority.

The final regulations will enable the Director to implement the waiver redesign consistent with the directives in Chapter 780, Item 306.CCCC of the 2016 *Acts of Assembly*, Chapter 836, Item 306.CCCC of the 2017 *Acts of Assembly*, Chapter 2, Item 303.I of the 2018 *Acts of Assembly*, and Chapter 854, Item 303.I of the 2019 *Acts of Assembly*.

Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed

regulations be highlighted in the final regulations. Certain changes made between the proposed and final stages of these regulations may constitute changes with “substantial impact,” which may necessitate an additional comment period in accordance with the provisions of §§ 2.2-4007.06 and 2.2-4013(C) of the VAPA.

If you have any questions or need any additional information, please feel free to contact me at 786-2071.

cc: Kim F. Piner  
Chief/Senior Assistant Attorney General