Virginia Regulatory Town Hall

Final Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	Chapter 120
Regulation Title:	Mental Retardation Waiver
Action Title:	MR Waiver
Date:	8/8/2002; GOV APPROVAL NEEDED BY 8/20/02

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form,Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Home and Community Based Care Waiver for Individuals with Mental Retardation current regulations are due to expire October 16, 2002, and the Director wishes to continue regulating the subject entities. The new regulations allow full implementation of the new Mental Retardation (MR) Waiver, as approved by the Centers for Medicare and Medicaid (CMS) (formerly HCFA) and address the following: 1) continued coverage of consumer-directed personal attendant, companion, and respite services; 2) continued coverage of personal emergency response systems; 3) reinstatement of the prevocational service that had been deleted in 1994; 4) maintain the work allowance for individuals on this waiver pursuant to the 2000 Appropriation Act; and 5) continue to address the CMS concerns about the health and safety of individuals participating in the MR Waiver.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

MENTAL RETARDATION WAIVER PROPOSED REGULATIONS
JULY 2002

VAC	PROPOSED REGULATIONS	FINAL REGULATIONS	RATIONALE
12VAC30-120-210	Definitions	Definitions	Repealed. These were emergency regulations for the "old waiver" and will expire October 17, 2002.
12VAC30-120-211	Definitions	Some definitions were deleted, revised, or added for clarification of the regulations.	Changes are a result of the final 60-day public comments.
12VAC30-120-213	General coverage and requirements for home and community-based MR waiver services.	Some regulations were deleted, revised, or added for clarification. Revisions were made to enhance internal consistency within these regulations and other Medicaid regulations. Some revisions were made to ensure that the final regulations were not narrower than the emergency regulations. Some re-ordering of the content was completed to enhance readability.	Changes were a result of the final 60-day public comments.
12VAC30-120-217	General requirements for home and community-based providers.	Revisions were made to enhance internal consistency within these regulations and other Medicaid regulations. Some language changes were made to reflect the preferences in the Mental Retardation (MR) community.	Changes were a result of the final 60-day public comments.

		Added: An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides MR Waiver services to the individual.	
12VAC30-120-219	Participation standards for home and community-based participating providers.	Revisions were made to enhance internal consistency within these regulations. Of note, 12VAC30-120-219.C reflects that individuals must be informed of all other waiver providers by the case manager instead of by each waiver service provider. Efforts were made to ensure that the family/ caregiver is involved.	Changes were a result of the final 60-day public comments.
12VAC30-120-220	General coverage and requirements for home and community-based care services.	General coverage and requirements for home and community-based care services.	Repealed. These are emergency regulations for the "old waiver" and will expire October 17, 2002.
12VAC30-120-221	Assistive Technology	Assistive Technology Provider requirements were clarified. Documentation requirements were added for consistency with the emergency regulations.	Changes were a result of the final 60-day public comments.
12VAC30-120-223	Companion Services (agency-directed model)	Companion Services (agency directed model). Some re-ordering of the content was completed to enhance readability. Some language was added to enhance clarity.	Changes were a result of the final 60-day public comments.
12VAC30-120-225	Consumer – directed services: personal assistance, companion and respite.	Consumer – directed services: personal assistance, companion and respite. Language was added and changed for clarity. Some re-ordering of the content was done to enhance readability. Clarification of who cannot	Changes were a result of the final 60-day public comments.

		be a CD services facilitator was added. The requirement to have an RN consult available has been changed to reflect that the CD services facilitator should consult with the primary health care provider. Revisions were made to ensure the individual was involved in reviews of the ISP.	
12VAC30-120-227	Crisis stabilization services.	Crisis stabilization services. Some re-ordering of the content was completed to enhance readability. Of note, the requirement about training goals has been deleted.	Changes were a result of the final 60-day public comments.
12VAC30-120-229	Day support services	Day support services. Efforts were made to ensure that the family/caregiver is involved. Language was added for clarity.	Changes were a result of the final 60-day public comments.
12VAC30-120-230	General conditions and requirements for all home and community-based care participating requirements.	General conditions and requirements for all home and community-based care participating requirements.	Repealed. These are emergency regulations for the "old waiver" and will expire October 17, 2002.
12VAC30-120-231	Environmental modifications.	Environmental modifications. Exclusions were updated to include reasonable accommodations that are requirements of the Virginians with Disabilities Act and the Rehabilitation Act.	Changes were a result of the final 60-day public comments.

12VAC30-120-233	Personal assistance services (agency-directed model)	Personal assistance services (agency-directed model). Some re-ordering of the content and language was added to enhance readability. Of note, the regulations clearly reflect that assistance with IADLs is an allowable activity. Revisions were made to ensure the individual was involved in reviews of the ISP and was offered choice. Of note, training goals and timetables have been deleted.	Changes were a result of the final 60-day public comments.
12VAC30-120-235	Personal Emergency Response System (PERS)	Personal Emergency Response System (PERS). Of note, the regulations were revised to clarify that adjustments to equipment are an allowable activity. The provider's monthly testing requirement has been deleted as the regulations reflect that they must ensure the equipment fully operational.	Changes were a result of the final 60-day public comments.
12VAC30-120-237	Pre-vocational services.	Pre-vocational services. Eligible individuals have been clarified. Revisions were made to ensure the individual was involved in reviews of the ISP.	Changes were a result of the final 60-day public comments.
12VAC30-120-240	Covered services and limitations.	Covered services and limitations.	Repealed. These are emergency regulations for the "old waiver" and will expire October 17, 2002.
12VAC30-120-241	Residential support services.	Residential support services. Revisions were made to ensure the individual was involved in reviews of the ISP. Of note, the following clarifications were made: elaboration of the definition,	Changes were a result of the final 60-day public comments.

		ISP must reflect weekly hours of services, and clarification of the provision of residential and personal assistance services for the same individual.	
12VAC30-120-243	Respite services (agency-directed model)	Respite services (agency-directed model). Re-ordering of the regulations were made to enhance clarity and readability. Of note, training goals have been deleted.	Changes were a result of the final 60-day public comments.
12VAC30-120-245	Skilled nursing services.	Skilled nursing services. Clarity of allowable activities was provided. Revisions were made to ensure the individual was involved in reviews of the ISP. Of note, training goals and timetables for goals and objectives have been deleted.	Changes were a result of the final 60-day public comments.
12VAC30-120-247	Supported employment services.	Supported employment services. Eligibility requirements were clarified. Revisions were made to ensure the individual was involved in reviews of the ISP. The 780 unit annual limit on individual job placement was removed.	Changes were a result of the final 60-day public comments.
12VAC30-120-249	Therapeutic consultation	Therapeutic consultation. Definition, purpose, and documentation requirements of the service were clarified.	Changes were a result of the final 60-day public comments.
12VAC30-120-250	Reevaluation of service and utilization review.	Reevaluation of service and utilization review.	Repealed. These are emergency regulations for the "old waiver" and will expire October 17, 2002.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages 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.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that 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 *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The *Code* also provides, in the Administrative Process Act (APA) §§ 2.2-4007 and 2.2-4012, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency initiated the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on October 17, 2001. The *Code*, at § 2.2-4007 requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the *Virginia Register* on October 17, 2001. The agency's proposed regulations were filed with the Registrar on April 11, 2002, for *Register* publication May 6, 2002.

Title 42 of the *Code of Federal Regulations* § 430.25 permits states to operate, consistent with federal approval, programs that waive certain basic overarching Medicaid requirements. The broad overarching requirements that can be waived are state-wideness (the coverage of a service across the entire state), comparability of amount, duration, and scope of services (coverage of the same service for all persons within an eligibility category), and freedom of choice of providers.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Department of Medical Assistance Services' (DMAS) original home and community based care waiver for individuals with Mental Retardation first became effective in 1991. Since that time, HCFA (now CMS), has granted successive renewal approvals. In 1999, CMS conducted an audit review of this waiver and cited issues that the Commonwealth was required to address before further waiver approval would be granted. Loss of federal approval, and the concomitant loss of federal funding dollars would mean the re-institutionalization of the individuals who have been served in the community through these waiver services; in addition, it would mean institutionalization of individuals who had previously avoided institutionalization due to the availability of the waiver services. For those individuals who could be expected to refuse to enter an institution, it would mean serious threats to their health, safety, and welfare as well as significant disruptions to their families and support systems.

These regulations will replace the existing emergency regulations. This regulatory action is expected to help protect the health and safety of individuals in the new waiver. These regulations will help improve the health and safety of families with children and adults who are affected by mental retardation. These regulations will provide community support services to enable these children and adults to live successfully in their homes and communities.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The Governor announced in October, 2000, that the Commonwealth would develop a new Mental Retardation (MR) Waiver to replace the existing waiver. The Secretary of Health and Human Resources appointed an MR Waiver Task Force to advise DMAS on the development of this new waiver. The MR Waiver Task Force is comprised of family members and individuals, as well as, staff of DMAS, the Department of Mental Health, Mental Retardation and Substance

Abuse Services (DMHMRSAS), and other state agencies and advocacy groups. The work of this Task Force resulted in a new waiver application being sent to CMS in April of 2001. Revisions to the application were made in September 2001 per CMS and CMS approved the revised application. The approval is contingent upon the Commonwealth implementing the waiver as proposed and the following assurances that the Commonwealth made to CMS:

1) All assisted living facilities providing MR Waiver services licensed by the Department of Social Services (DSS) will apply for licensing by DMHMRSAS;
2) DMHMRSAS' Office of Mental Retardation and Licensing Staff will jointly conduct training for all assisted living facilities serving as MR Waiver providers;
3) Individuals whose conditions or services in these assisted living facilities raise health and safety issues will be immediately transferred to a more suitable setting; and
4) Case managers are required to conduct monthly on-site visits for all individuals residing in DSS licensed facilities until such time as these facilities are licensed by DMHMRSAS.

To comply with the new waiver and to adhere to the assurances made to CMS, new regulations are required. Without the new regulations, DMAS lacks the regulatory authority to require these actions of the entities. The required licensing action was completed for providers to continue to receive Medicaid reimbursement for these individuals participating in the waiver. Assisted living facilities failing to secure the new license within the designated time period lost their provider agreement with DMAS to provide MR waiver services, and the affected individuals could elect to move to other settings. In addition, the new regulations address the following changes from the old waiver:

1) Implement consumer-directed personal assistance, companion, and respite services in the MR Waiver in addition to the current agency directed services;

2) Increase the work allowance for individuals participating in the waiver, as mandated by the 2000 General Assembly Acts of Assembly Item 319 DD. This permits individuals who are capable of paid employment to retain more of their earnings, rather than having to contribute more to their costs of care, to defray some of the costs of such employment (appropriate clothing, transportation, meal expenses, etc). Employment enhances one's self esteem and generally contributes to one's sense of overall well being;

3) Include coverage of personal emergency response systems; and

4) Enhance utilization review procedures

Consumer direction of personal assistant, companion, and respite services, and the personal emergency response systems are the least intrusive methods of providing these services under the MR Waiver. Because of the federal (CMS) health and safety concerns, DMAS is not permitted to continue to offer services and to conduct utilization reviews in the previous manner. DMAS must change the way services are provided and monitored, or face not having the federal authority and dollars to provide the waiver services.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

The primary advantage for citizens of the Commonwealth will be that individuals with mental retardation will be able to live as independently as possible in their communities. It will allow some of these individuals to live on their own and enable others to remain with their families. To the extent of their abilities, they will be able to function in their communities, attending school, obtaining employment and participating in the management of their own care.

To date, the Commonwealth has been successfully serving individuals in the community, instead of in institutions, at less than half the institutional cost per person. Currently, far more people are receiving services from the waiver than are in institutions. With over 5,000 individuals depending on the MR waiver alone for needed services, not providing services would result in far greater health and safety concerns as well as huge increases in the number of individuals in the institutions of the Commonwealth. Such cost increases for the Commonwealth would be astronomical.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

DMAS' proposed regulations (Home and Community Based Services for Individuals with Mental Retardation12VAC 30-120-210 through 12 VAC 30-120-250) were published in the May 6, 2002 *Virginia Register* for their comment period from May 6 through July 5, 2002. Comments were received from representatives of these community services boards: Richmond Behavioral Health Authority, Danville-Pittsylvania Community Services, Chesterfield, Harrisonburg-Rockingham, Central Virginia Community Services, Portsmouth Mental Retardation Services, Mount Rogers Community MH & MR Services, Norfolk, Rockbridge Area, Crossroads Services Board, and Prince William County. Comments were also received from the Legal Aid Justice Center, the Department of Mental Health, Mental Retardation and Substance Abuse Services' (DMHMRSAS) Office of Mental Retardation, The ARC of Virginia, Fidura and Associates, Spina Bifida Association of Tidewater, Commonwealth Coalition for Community, Virginia Medicaid Waiver Network, Loudoun Association for Retarded Citizens, Tidewater Down Syndrome Association, Virginia Association of Centers for Independent Living, Endependence Center Incorporated, Central Virginia Training Center, and nineteen individuals via electronic mail and letters.

A significant number of submitted comments contained medical and other identifying information about specific individuals with Medicaid and must be kept confidential.

A summary of the received comments follows:

ONE TIME TRANSITIONAL FUNDS

Comment: In May 2002, the Centers for Medicare and Medicaid (CMS) issued a letter to State Medicaid Directors clarifying the usage of waiver funds for one-time transitional expenses for individuals transitioning to the community from institutions. These expenses may include security deposits for a lease on a home or apartment, essential furnishings, moving expenses, set-up fees or deposits for utilities, and health and safety measures.

Thirteen commenters recommended that coverage of transition services be included in this waiver program as clarified by CMS. Several commenters indicated specific incidences where individuals were unable to successfully transition to the community due to a lack of funds to cover such costs. Two commenters noted that in the past, state or community services boards funds had been used to cover these expenses. Two commenters noted individuals being discharged from state facilities often have very limited funds and little clothing and personal items. One commenter noted some individuals being discharged from facilities have little to no family support.

Agency Response: DMAS is currently conducting a study (related the 2002 Appropriation Act) to determine the feasibility of using federal Medicaid funds for start-up costs, capital and operational, for community facilities. This study is due to the General Assembly by December 1, 2002 and will fully explore this issue.

CONSUMER DIRECTION

Comment: Thirty commenters recommended adding consumer-directed options for all services offered in the program and that individual choices should be maximized through out the entire regulations. They also suggested making some provider qualifications optional, or eliminating them for consumer-directed services, and clarifying the roles of the case manager and consumer-directed services facilitator.

Agency Response: This is being explored by DMAS and stakeholders through review of the CIRCLE report. In order to make some services consumer-directed, changes would have to be made to the State Nurse Practice Act (the statutory code).

Some provider qualifications are based on directives from CMS. Others are developed to ensure that health and safety standards are upheld. The roles of the case managers and consumer directed services facilitators are explained in the provider manual and DMHMRSAS is available for clarification and technical assistance. Some consumer-directed services units and limitation regulations have been revised based upon public comment.

Comment: Thirty commenters recommended omitting the RN consulting services for the consumer directed services.

Agency Response: DMAS agrees with this recommended change and the regulations will be revised to reflect that consultations should be coordinated with the individual's primary health care provider.

Comment: One commenter noted that the requirement to determine the specific days and hours of need for the service in advance is restrictive. This commenter noted concern that consumer-directed services may not continue since it is so difficult for an individual to access and use them.

Agency Response: Adding flexibility to services is being explored as part of DMAS' and stakeholders' reviews of the CIRCLE report. Some pre-authorization is necessary; however, the extent to which this is necessary will be explored.

Comment: Two commenters noted the desire for individual or family/caregiver control over individual service and support budgets, as well as, concern about the current reimbursement rates and funding allotted for these services in particular.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates. DMAS considers this work to be a substantial component to implementing the new waiver. DMAS will study further the recommendation to include individual service and support budgets with individual or family/caregiver controls.

Comment: One commenter questioned whether the areas noting criminal record checks are congruent with other federal and state laws and regulations and whether they are consistent throughout the regulations.

Agency Response: DMAS is consulting with the Attorney General's Office for clarification and guidance in this area.

Comment: An additional commenter questioned whether an Adult Protective Services Registry exists and if it should be checked during the hiring process.

Agency Response: DMAS has consulted with the Virginia Department of Social Services and there is no adult protective services registry.

Comment: One commenter recommended that instead of the consumer-directed services facilitator contacting the case manager to discuss agency directed services with the individual and or family/caregiver in the event a consumer-direction service is not working out, that the discussion focus on "options" in general.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

ISSUES ABOUT PROVIDERS

Comment: Three commenters noted family members "who provide services" should meet the provider qualifications.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: Two commenters recommended that items about case management include that case management can be provided by contractors of the community services board/behavioral health authority (CSB/BHA).

Agency Response: This issue has not yet been decided; however, language has been removed that would definitely prohibit this service in case DMAS determines that it is allowed.

Comment: One commenter noted a difference in the regulations' definition of Qualified Mental Retardation Professional (QMRP) from the federal Intermediate Care Facility for the Mentally Retarded (ICF/MR) staffing regulation and the DMHMRSAS licensing regulations.

Agency Response: The MR Waiver definition for QMRP was intentionally made more broad than the definition for a QMRP for an ICF/MR to allow providers more flexibility with staffing.

Comment: One commenter questioned the definition of legally responsible relative as it does not read the same as DMHMRSAS human rights regulations.

Agency Response: DMAS has removed this definition and all mention of the term from the regulations.

Comment: Thirty-two commenters recommended the regulations specify it is the case manager's responsibility to notify the individual of all available waiver providers.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation

Comment: Thirty-two commenters recommended DMAS maintain a regularly updated list of all providers and make it available to the public.

Agency Response: DMHMRSAS keeps a list of all DMHMRSAS licensed providers and the services they provide. This is available to the public. The DMAS HELPLINE is available to all providers to assist with identifying DMAS enrolled providers for specific services. Individuals and family/caregivers should contact the case manager or consumer-directed services facilitator for assistance with provider information. In addition, providers for all services may be located on the DMAS website.

Comment: One commenter recommended the regulations include provisions to guarantee conflict-of-interest-free case management services; that is, separate the CSB/BHA role of case management and staff person who provides waiver support services to the individual.

Agency Response: DMAS has clarified in the regulations that the case manager can neither be the provider of a waiver service nor the immediate supervisor of a waiver service provider.

Comment: One commenter recommended an individual's case manager shall not be the direct service staff person nor the immediate supervisor of a staff person who provides support services to the individual.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect this recommendation.

Comment: Two commenters recommended that there be consistent interpretation of the regulations by the screening staff. It seems that services are being inappropriately denied to otherwise eligible children due to misunderstandings, misinterpretations, and lack of knowledge on parts of screening staff.

Agency Response: This is an operations and training issue that is not appropriate to include in the regulations. This concern will be forwarded to the appropriate parties to address.

Comment: One commenter recommended services may be discontinued in an emergency situation when "other individuals in that setting" (in addition to the individual and provider personnel) are at risk due to the behavior of the individual.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter recommended the regulations reflect that DMAS shall be responsible for assuring that a sufficient number of providers are available to facilitate the individual's choice of providers as required by the Centers for Medicare and Medicaid Services.

Agency Response: DMAS complies with the federal requirement for freedom of choice of providers.

Comment: Two commenters stated since some providers are licensed by DMHMRSAS, there should not be specific provider requirements for them as they must adhere to the DMHMRSAS requirements.

Agency Response: The emergency regulations did not include specific requirements for DMHMRSAS licensed providers and DMAS appreciates those providers' efforts in meeting the DMAS requirements. However, DMAS, a separate state agency, must have its own regulations to guide its service provision. DMAS cannot monitor or enforce another state agency's regulations.

Comment: One commenter referred to citations in DMHMRSAS licensing and human rights regulations and noted several instances where they and the waiver regulations are not congruent. This commenter felt the DMHMRSAS requirements should supercede other requirements in some cases.

Agency Response: The emergency regulations did not include specific requirements for DMHMRSAS licensed providers and DMAS appreciates those providers' efforts in meeting the DMAS requirements. However, DMAS, a separate state agency, must have its own regulations to guide its service provision. DMAS cannot monitor or enforce another state agency's regulations. In addition, DMHMRSAS licensed providers are not the only providers of MR Waiver services.

Comment: Thirty commenters recommended that "individualized planning" be added to training requirements for all providers.

Agency Response: This approach is inherent in the requirements for providers.

Comment: Thirty commenters recommended that persons providing residential support should have diet, nutrition, and medication training.

Agency Response: DMHMRSAS licensing requirements already include this recommendation.

Comment: Two commenters noted the inadequacy of the waiver services reimbursement rates impacting the attraction and retention of quality providers.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates. DMAS considers this work to be a substantial component to implementing the new waiver.

Comment: One commenter recommended striking all references to "legally responsible relative" and have the family provider referenced as "parent of a minor or spouse".

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect this recommendation.

Comment: One commenter recommended expanding the requirements for the consumer directed services facilitator and recommended that the regulations be more specific about who cannot be a consumer directed services facilitator.

Agency Response: DMAS will study further the recommendation to expand the role of the consumer directed services facilitator. DMAS has revised the regulations to be more specific about who cannot be a consumer directed services facilitator.

Comment: One commenter recommended changing the language about the consumer directed services facilitator being responsible for "managing" an individual's behavior.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect this recommendation.

ISSUES ABOUT SERVICES

Comment: Thirty commenters noted that the regulations do not address the required transfer of children age 6 without a diagnosis of mental retardation to the Individual and Family Developmental Disabilities Support (DD) Waiver. They recommended this be added along with specific procedures to facilitate the transfer between the MR and DD Waivers.

Agency Response: The regulations for the Individual and Family Developmental Disabilities Support (DD) Waiver will be revised to reflect the 2002 General Assembly action. The provider manuals for both waivers will be revised to reflect the transfer procedures and responsibilities.

Comment: Thirty commenters recommended adding Family and Caregiver Training as an additional service.

Agency Response: 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.

Comment: Thirty commenters stated services should be provided as agreed to by the individual and not just as recommended by the case manager. In addition, the commenters requested a specific timeframe be added to the regulations for DMHMRSAS and the case manager to process the CSP or CSP revision. Two additional commenters stated that the individual and family/caregiver should be notified by DMHMRSAS of the approval of the CSP as well as the case manager. The 30 commenters also recommended that any extension request to initiate services must have the consent of the individual. This area included recommendations for specific timeframes for DMHMRSAS to process the extension request as well as notification to the individual.

Agency Response: CSP development/revisions, process timeframes and extension requests are detailed in the provider manual. The provider manual should be used to reference implementation and operation components related to services. The DMAS provider manual should be used in conjunction with the provider manual and in consultation with DMHMRSAS for technical assistance and guidance. Some clarifying language has been added to this section of the regulations.

Comment: Two commenters recommended that the process for accessing MR Waiver services should be written to reflect current practices.

Agency Response: DMAS will revise regulations that address "Waiver approval process: Accessing Services."

Comment: Thirty commenters recommended that the regulations should reflect that individuals will not be charged for screenings or evaluations for eligibility.

Agency Response: DMAS pays for screenings for individuals who are Medicaid eligible at the time of the screening.

Comment: Thirty-one commenters recommended that the health and safety standards be redefined so it means services provided under the waiver are designed to maintain and/or improve an individual's ability to function in the community and avoid institutionalization without jeopardizing his right to a healthy and safe environment. One other commenter noted that any reference to the health and safety standard should include reference to the written ISP.

Agency Response: DMAS uses the standard as prescribed by CMS representatives. The regulations will be revised to include the reference to the ISP as that is per the CMS guidance.

Comment: Thirty commenters recommended assistive technology services include the installation, training on how to use the device, modifications to the device that customize it to the individual's needs, and repairs. Thirty-one commenters recommended the service be intended to achieve maximum functioning by the individual and allow the dollar amount cap of $5000 per CSP year to be exceeded if the case manager presents documentation of substantiated need and it is cost effective.

Agency Response: 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.

Comment: One other commenter recommended explaining the provider qualifications and documentation requirements more extensively.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect this recommendation.

Comment: Thirty commenters recommended that companion services (both agency-directed and consumer-directed) be provided: (1) up to 16 hours per day; (2) by staff 16 years of age and older; and (3) to assist individuals to participate in community activities that further develop social, recreational, cultural, spiritual and civic connections.

Agency Response: DMAS will take this recommendation into consideration for further study. However, this recommendation would increase the budget for this waiver and would require additional appropriations from the General Assembly. The regulations have been revised for clarification to reflect the recommendation to include community activities.

Comment: Thirty-three commenters recommended companion services be available to individuals under the age of 18.

Agency Response: The service is defined by the Centers for Medicare and Medicaid Services as adult companion. There is no federal provision for this service to be provided to children under 18.

Comment: One commenter recommended that the regulations more strongly address the 8 hour limit for either companion agency-directed, consumer-directed companion or a combination of the two modalities.

Agency Response: DMAS agrees with the recommendation and the regulations will be revised to reflect this recommendation.

Comment: One commenter questions why the companion service cannot be provided in a congregate residential setting by the provider's staff. This same commenter noted that there are no requirements for the supervision of the agency-directed modality of this service and recommended that the consumer-directed modality be more specific about covered activities.

Agency Response: These requirements will be further studied by DMAS and addressed at a later time. The regulations will be revised to reflect the recommendations about supervision in the agency-directed model and covered activities in the consumer directed model.

Comment: One commenter recommended expanding availability of crisis stabilization services for more than 60 days per year so individuals can receive the intensive supports they need to avoid institutionalization.

Agency Response: DMAS will take these recommendations into consideration for further study. However, this would increase the budget for this waiver and would require additional appropriations from the General Assembly.

Comment: Four additional commenters noted the crisis stabilization definition is not the same wording as stated later in the regulations.

Agency Response: DMAS agrees that the regulations must be internally consistent and will make the necessary revisions for this service.

Comment: One commenter recommended crisis stabilization services have more authorized hours or be replaced with Behavioral Intervention as a service. The commenter offered specific recommendations about this being a longer-term service and not temporary in nature for individuals who require intensive interventions in order to prevent institutionalization.

Agency Response: DMAS will take these recommendations into consideration for further study. However, this would increase the budget for this waiver.

Comment: Thirty commenters recommended that day support services include assistance with personal care.

Agency Response: The regulations will be clarified to reflect this allowable activity.

Comment: Thirty commenters suggested the regulations include specific information about calculating units of services. An additional commenter noted there is no definition of a unit for day support services.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates.

Comment: One commenter noted that day support goals should not be linked to a time line as some goals are not time limited, such as maintaining physical health.

Agency Response: DMAS recognizes that maintaining physical health is not time limited; however, other goals do require a time frame. The regulations were clarified to reflect this.

Comment: Thirty commenters recommended environmental modifications be provided in a workplace setting. An additional recommendation included adding language to exclude modifications that are requirements of the Rehabilitation Act or the Virginians with Disabilities Act.

Agency Response: DMAS will review this based on budget constraints.

Comment: Thirty-one commenters recommended that the environment modification service be intended to achieve maximum functioning by the individual and allow the dollar amount cap of $5,000 per CSP year to be exceeded if the case manager presents documentation of substantiated need and it is cost effective.

Agency Response: DMAS will take this recommendation into consideration for further study. This would have an impact on the budget and would require additional appropriations from the General Assembly.

Comment: Thirty-one commenters recommended it be specified that personal assistance services include assistance with IADLs (Independent Activities of Daily Living).

Agency Response: DMAS agrees with the recommendation to clarify the regulations that personal assistance services include providing assistance with IADLs.

Comment: Thirty-one commenters suggested that individuals receiving residential services should be allowed personal assistance services although not simultaneously.

Agency Response: DMAS will revise the regulations to reflect that personal assistance services and congregate residential services may not be provided for the same individual.

Comment: Thirty-one commenters suggested that personal assistance services should be available to individuals under the age of 18.

Agency Response: There has been no age limit for this service.

Comment: Thirty-two commenters suggested removing the training items from the personal assistance ISP.

Agency Response: DMAS agrees that training is not a component of personal assistance and the regulations will be revised to reflect the recommendation.

Comment: One commenter noted inconsistencies between agency-directed and consumer-directed personal assistance. This same commenter recommended removing the ISP timetable requirement for personal assistance.

Agency Response: The regulations will be revised to enhance consistency and clarity for personal assistance. DMAS agrees with the recommendation to remove the ISP timetable requirement for personal assistance and the regulations will be revised to reflect the recommendation.

Comment: Thirty commenters recommended that personal emergency response systems (PERS) include "adjustments" to the technology as an allowable activity.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter noted there is not a defined unit of service for pre-vocational services.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates.

Comment: One commenter recommended that the regulations include also that "individuals who have graduated and are, therefore, not eligible for special education funding, that documentation is required for lack of DRS funding".

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter recommended allowing residential providers to bill for overnight services; that is, up to 8 hours of awake, overnight staffing if there is a demonstrable medical, behavioral, or physical need. Another commenter recommended allowing residential providers be reimbursed for 24 hours of service in a group home as that is what they provide if the individual needs it.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates for congregate residential services.

Comment: One commenter noted concerns about residential support services being billed in hourly (or less) increments when it is to be a flexible set of services and supports to meet the needs of the individual. One commenter questioned why bill by the hour when the ISP is by the month or week.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates for congregate residential services.

Comment: One commenter noted that the intent of residential services is not being just a training opportunity but also a forum for the individual to practice and promote independence, health, and safety.

Agency Response: DMAS has clarified this definition to read: Residential support services consist of training, assistance, or specialized supervision provided primarily in an individual's home or in a licensed or approved residence considered to be his home to enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

Comment: One commenter noted that some goals are not time limited and there should not be a timetable on the ISP for residential services.

Agency Response: Residential providers must adhere to licensing requirements of DMHMRSAS that include target dates for ISP goals and objectives. DMAS cannot change this requirement.

Comment: Thirty-two commenters noted that references to Residential Support services included "DSS approved providers" and recommended that this be omitted.

Agency Response: Adult foster care providers are allowed to provide Residential Support for the MR Waiver; therefore this section has been clarified as to which DSS approved providers may provide this service.

Comment: Thirty-two commenters recommended clarification of the 24-hour requirements.

Agency Response: 12VAC30-120-241.A notes that residential support services will not be routinely reimbursed for a continuous 24-hour period. This section of the regulations addresses both in-home and congregate residential supports. 12VAC30-120-241.B.2 addresses congregate residential supports only.

Comment: One commenter recommended that in-home supports and congregate services be defined.

Agency Response: The regulations for residential services have been revised to provide greater clarity of the criteria for the two services.

Comment: One commenter recommended that the cap be removed from respite services and that it should be allowed for Adult Foster Care and Family Care settings. This commenter also noted that respite services may not always be provided on a weekly basis.

Agency Response: Any Medicaid expansion of coverage requires funding from both the federal and the state governments. With the economic challenges at the State level, any expansion of coverage is not feasible at this time. The regulations will be revised to reflect the recommendation about services not always being provided on a weekly basis.

Comment: Thirty-one commenters recommended that skilled respite services be added to the waiver.

Agency Response: The MR Waiver Task Force did not consider the addition of this new service to this waiver program. DMAS will, however, take this recommendation into consideration for further study but also advises that service expansions require additional appropriations from the General Assembly.

Comment: Thirty-one commenters recommended that respite be available to an unpaid caregiver that does not live with the individual.

Agency Response: Any Medicaid expansion of coverage requires funding from both the federal and the state governments. With the economic challenges at the State level, any expansion of coverage is not feasible at this time.

Comment: One commenter had an additional recommendation to remove the requirements for training goals and objectives from the respite ISP.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: Two commenters recommended the regulations should include clear references to "center-based respite" as well as in the individual's home.

Agency Response: Further guidance for this issue is available in the provider manual.

Comment: One commenter noted that there is a lot of paperwork, assessments, etc. required for respite services and that some requirements are invasive of the individual's privacy.

Agency Response: The requirements for this service are intended to provide health and safety protections for the individual as well as offer respite for the caregiver. If respite is an intermittent service, then the assessment requirement is appropriate to ensure that the provider has the capability to meet the individual's needs in the absence of the caregiver. In addition, the documentation assists the supervisor with assessing the individual's satisfaction with services.

Comment: One commenter recommended that all goals be removed from skilled nursing as the desired outcome is to maintain the individual's health.

Agency Response: The ISP is a document that is developed to reflect the services to be provided to meet the needs of the individual. Having no goals or objectives leaves no guidance for expectations for the individual, family/caregiver or provider, and leaves room for gaps in services and misunderstandings about services to be provided. However, the requirement for a training goal has been removed.

Comment: One commenter recommended that timelines on the skilled nursing ISP should also be removed from this service.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter noted that Nursing Services should be titled "Skilled nursing" in the definitions section of the regulations.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter recommended adding consultation and training to other providers to the covered activities for skilled nursing services.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter noted that it is difficult to meet individuals' needs due to the low reimbursement rate for skilled nursing services as well as the lack of qualified providers for this service.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates.

Comment: One commenter noted that there is not a definition for a unit of service for supported employment.

Agency Response: DMAS is working with a subgroup of the MR Waiver Task Force to explore reimbursement methodologies, units of service, and rates.

Comment: One commenter recommended that the regulations about supportive employment include "individuals who have graduated and are, therefore, not eligible for special education funding, that documentation is required for lack of DRS funding."

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter noted that therapeutic consultation is not to enhance the individual's utilization of waiver services, but rather to facilitate implementation of the individual's desired outcomes as identified in the CSP.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter recommended alternative language for the definition for therapeutic consultation

Agency Response: DMAS will revise the regulations for clarity.

Comment: One commenter suggested the limitations on reimbursement for travel time, written preparation and telephone communication hamper the development of a provider pool for therapeutic consultation.

Agency Response: The limits established for travel time, written preparation, and telephone communications are consistent with Medicaid requirements for other waiver and State Plan services. Any Medicaid expansion of coverage requires funding from both the federal and the state governments. With the economic challenges at the State level, any expansion of coverage is not feasible at this time.

Comment: One commenter recommended increasing the cap on the units when combining day support, supported employment, and pre-vocational services.

Agency Response: Any Medicaid expansion of coverage requires funding from both the federal and the state governments. With the economic challenges at the State level, any expansion of coverage is not feasible at this time. However, the annual 780 unit limit for individual job placement has been removed. This limit was inadvertent as the emergency regulations did not contain it.

Comment: One commenter made specific recommendations about the case manager involving the individual and/or family/caregiver in the annual review of the ISP.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: One commenter suggested that the regulations include the individual and/or family caregiver's right to request a review of the ISP at any time.

Agency Response: Individual and family/caregivers may request changes to the CSP/ISP whenever the needs of the individual change.

Comment: Thirty commenters recommended that there be clear distinctions between the role of the case manager and the role of the consumer directed services facilitator. They recommend that the case manager be responsible for assessments and ISPs while the consumer directed services facilitator is responsible for training and support of the individual or family/caregiver in the employer role.

Agency Response: The provider manual should be used as a reference for this issue. Regulations should be used in conjunction with the provider manual and in consultation with DMHMRSAS for technical assistance and guidance.

ISSUES ABOUT RECORD DOCUMENTATION

Comment: Thirty commenters recommended that, throughout the regulations, the quarterly review of the ISP by the case manager must be conducted with the individual and the individual must agree to any changes in the CSP. One additional commenter noted the annual review should be conducted with the individual and/or the family/caregiver.

Agency Response: DMAS agrees that the annual, and any ISP/CSP changes must be conducted with the individual and/or the family/caregiver. The regulations will be revised to reflect these recommendations. ISPs must be developed to meet identified needs.

Comment: Thirty commenters recommended all CSPs and ISPs justify how it will be ensured the individual receives services in an integrated environment and if not, why not.

Agency Response: This is an operations issue and will be forwarded to the appropriate parties for consideration.

Comment: Thirty commenters recommended if services are not delivered in accordance with the ISP that there be provider documentation to reflect unused services/hours and that this documentation be provided to the individual and the case manager.

Agency Response: The provider manual offers guidance for providers when the ISP cannot be implemented as written.

Comment: One commenter recommended therapeutic consultation providers be allowed to document their services in the form of contact-by-contact or by "monthly" notes.

Agency Response: This section of the regulations will be revised for clarification.

Comment: Three commenters recommended efforts be made to decrease the amount of documentation required of providers.

Agency Response: This concern is addressed in an on-going manner by operations.

Comment: Two commenters recommended language changes to reflect that the case manager must request the updated DMAS-122 annually and forward it to all service provider when obtained.

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

REGULATIONS LANGUAGE

Comment: Thirty-one commenters recommended the regulations' language be simplified and made easier for the target population to understand. Suggestions included clarifying/making consistent use of language so individuals receiving services understand the services. The language and organization of the regulations are perceived as barriers by these commenters. Recommendations included adding a number of additional definitions, and elaborating/changing definitions. Thirty-two commenters recommended re-ordering the regulations. Other recommendations included adding specific timeframes for certain actions to occur. These commenters would like the regulations to be used to increase awareness and understanding of the processes by all who use them.

Agency Response: Efforts have been made to enhance clarity and consistency with the MR waiver regulations. Where specific recommendations have been made, DMAS has tried to include the recommendations without changing the intent of the regulations. Some definitions have been added, revised, or deleted. Sections have been re-ordered. The provider manual may be used to further explain operations and processes. DMHMRSAS is available for technical assistance and consultation.

Comment: Thirty-one commenters recommended putting the full language of other referenced cites in the regulations.

Agency Response: Referring to other regulations simply by using the citation is called incorporation by reference. It is a legitimate drafting technique in administrative laws. The advantage to both the agency and the public in the use of this technique is whenever changes are made in the basic regulation, then those changes are automatically carried over to wherever the basic regulation is cited by reference. There are more advantages to using incorporation by reference than there are disadvantages.

Comment: Thirty-one commenters recommended deleting the word "clinical".

Agency Response: DMAS agrees with this recommendation and the regulations will be revised to reflect the recommendation.

Comment: Thirty-one commenters recommended adding "welfare" to any statement noting the "health and safety" of an individual.

Agency Response: This language was agreed to in a Settlement Agreement.

Comment: Two commenters noted that there should be consistency between "mental retardation waiver", "community-based waiver", and "home and community based waiver". There were general recommendations about correcting grammar throughout the regulations. One commenter had many recommendations about changing language and re-ordering within sentences.

Agency Response: DMAS will make revisions to the regulations to improve the grammar, enhance clarity, and not alter the substance of the regulations.

ISSUES ABOUT WAITING LISTS

Comment: Thirty commenters recommended the "Urgent Criteria" section of the regulations be renamed "Waiting Lists". They also recommended there be 3 categories of waiting lists and had specific recommendations about defining/re-defining, notification to the individual, timeframes and how to use the lists.

Agency Response: The statewide waiting lists are managed by DMHMRSAS which already requires that CSBs keep a third list for planning. The provider manual details information about

notifications, timeframes and using the lists. In addition, DMHMRSAS is available for technical assistance.

Comment: Thirty commenters recommended requiring a planning list be kept by each CSB/BHA.

Agency Response: Each CSB already keeps a planning waiting list. This list is for individuals who are projected to need services in the future and who do not meet the urgent or non-urgent waiting list criteria. DMHMRSAS uses this information for their Comprehensive Plan development.

Comment: Thirty commenters recommended requiring case management services be provided to individuals on the waiting lists.

Agency Response: Regulations related to MR case management services can be found at VAC 30-50-450. The regulations do not restrict the provision of case management services for individuals on waiting lists. However, the individual must otherwise be Medicaid eligible.

Comment: Two commenters noted that the waiting lists are related to the waiver being under-funded for the amount of need in Virginia.

Agency Response: DMAS will take these comments into consideration for further study. Additional funding of the waiver would have an impact on the budget and would require additional appropriations from the General Assembly.

Comment: One commenter recommended that this section be expanded to include more of the management of the waiting list.

Agency Response: Management of the MR Waiver waiting lists is conducted by DMHMRSAS in conjunction with the CSBs/BHAs. The provider manual is used for guidance.

Comment: Two commenters questioned what is a "preferred" service as mentioned in the context of service enrollment/authorization.

Agency Response: DMAS has clarified this section of the regulations to reflect that the "preferred" service is the "requested" service.

Comment: One commenter notes that the proposed urgent criteria may be narrower than the current criteria.

Agency Response: DMAS agrees and, since this was not the intent of this action, is revising the regulations.

ISSUES ABOUT DUE PROCESS & APPEALS

Comment: Thirty commenters recommended the regulations include specific language about appeal rights when individual and families do not consent to recommended evaluations or CSP changes. These commenters suggested that consent for services should be added throughout the regulations. They recommended that non-emergency situations be described and that a timeline for all appeal notifications should be included in the regulations.

Agency Response: DMAS requires that individuals and family/caregivers be offered choices of providers and choices of services. In addition, DMAS requires that individuals and family/caregivers be offered a choice of receiving services in a community based setting or institutional setting (ICF/MR). When these choices are made the individual or family/caregiver is inherently agreeing to the services offered. When an individual or family/caregiver is not in agreement with decisions that are made by the case manager, a provider, DMHMRSAS or DMAS that affect the CSP/ISP or its development, implementation, or revision, the case manager must inform the individual or family/caregiver of the appeal rights. The appeals process and timelines are described in the provider manual.

ISSUES ABOUT EPSDT

Comment: Thirty commenters recommended this definition (for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program) be revised. They also suggested these services include screenings as well as evaluations.

Agency Response: DMAS agrees with the recommendation to include "screenings" and the regulations will be revised to reflect the recommendations. These regulations are to be consistent with 12 VAC 30-50-130 which defines EPSDT.

Comment: Thirty commenters suggested that the case manager be required to determine if eligible children are receiving the available services. However, another commenter questioned if a case manager can insist a child receive EPSDT services.

Agency Response: Ensuring that individuals with mental retardation receive needed medical care, treatment, services, and supports is inherent in the role of case managers. The case manager does not have the authority to demand that an individual with mental retardation receive any service. If the individual or family/caregiver chooses to not use the recommended services, then the case manager must assess whether if the individual's health and safety is at risk and take appropriate actions.

GENERAL COMMENTS

Comment: Thirty commenters recommended the regulations should emphasize the following: (1) program outcomes; (2) individual's choice of providers and services; (3) individualized supports; (4) the functional improvement of the individual instead of the remediation or the maintaining of function by the individual; (5) and enhancing access to the services. One commenter of this group recommended DMHMRSAS licensing requirements that inhibit natural supports be addressed and include provisions for supporting individuals who do not have family or friends.

Agency Response: The regulations are being revised to include many of the recommendations received from the public comment period. These revisions should help the regulations to more clearly address program outcomes, individual choices, individualized supports, and access to services.

Concerns about the DMHMRSAS licensing requirements should be forwarded to DMHMRSAS. The public is encouraged to participate in DMHMRSAS' regulatory process to voice their concerns.

Comment: Thirty commenters recommended that an additional subpart be added to the regulations, "Procedural Safeguards". This subpart would include the following: appeal rights, choice of providers, consent, discharge, participation in meetings, procedural safeguards statement, records, and written notice.

Of these 30 commenters, 13 noted the following items to be of specific concern to them:

1. Emphasize improvement in functioning instead of remedial or medical benefit
2. Ease age restrictions and caps on hours and dollars
3. Loosen provider qualifications for consumer directed services
4. Clarify the roles of case manager and consumer directed services facilitator
5. Add consumer direction service delivery model to every service

Agency Response: When an individual or family/caregiver is not in agreement with decisions that are made by the case manager, a provider, DMHMRSAS or DMAS that affect the CSP/ISP development, implementation, or revision, the case manager must inform the individual or family/caregiver of the appeal rights. The appeals process and timelines are described in the provider manual. The regulations will be revised to include many of the recommendations received from the public comment period. These revisions should help the regulations to more clearly address program outcomes, individual choices, individualized supports, and access to services. Easing the caps on service limitations and offering consumer directed models for each service would increase the cost of the waiver. Additional funding of the waiver would have an impact on the budget and would require additional appropriations from the General Assembly.

Comment: One commenter asked a series of operational questions in reference to several components of the regulations.

Agency Response: The provider manual should be used to reference implementation and operational components of the waiver.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The proposed regulations will repeal the following sections of the Virginia Administrative Code:

12VAC 30-120-210
12VAC 30-120-220
12VAC 30-120-230
12VAC 30-120-240
12VAC 30-120-250

The new MR Waiver Regulations include the following sections of the Virginia Administrative Code:

12VAC30-120-211 through 12VAC30-120-259 excluding the sections noted above.

The proposed changes allow the Department of Medical Assistance Services to fully implement the new MR Waiver as approved by the Centers for Medicare and Medicaid (CMS) and to uphold the assurances made by the Commonwealth to CMS.

MR WAIVER PROPOSED REGULATIONS
CHANGES FROM EMERGENCY REGULATIONS

VAC	EMERGENCY REGULATIONS	PROPOSED REGULATIONS
12VAC30-120-210	Definitions	Repealed. These emergency regulations are for the "old waiver" and will expire October 17, 2002.
12VAC30-120-211	Not Applicable (NA)	Definitions. To replace 12VAC30-120-210 repealed definitions in order to continue implementation of new waiver. In addition, some definitions are revised in order to be in compliance with the waiver application.
12VAC30-120-220	General coverage and requirements for all home and community-based care waiver services	Repealed. The emergency regulations are for the "old waiver" and will expire October 17, 2002.

12VAC30-120-212	NA	General coverage and requirements for all home and community-based care waiver services. To replace 12VAC30-120-220. The emergency regulations are for the "old waiver" and will expire October 17, 2002.
12VAC30-120-213	NA	Individual eligibility requirements. To replace 12VAC30-120-220. The emergency regulations are for the "old waiver" and will expire October 17, 2002. In addition, this revision maintains the work allowance for individuals on this waiver pursuant to the 2000 Appropriation Act. This section also includes some formatting revisions in order to clarify some processes.
12VAC30-120-230	General conditions and requirements for all home and community-based care participating providers.	Repealed. The emergency regulations are for the "old waiver" and will expire October 17, 2002
12VAC30-120-214	NA	General requirements for home and community-based care participating providers. To replace 12VAC30-120-230 in order to continue implementation of new waiver. References to other specific VAC regulations were deleted as those regulations are currently under review/revision. Provider reporting requirements for DMHMRSAS were also added to this section.
12VAC30-120-215	NA	Participation standards for home and community-based care participating providers. To replace 12VAC30-120-230. The emergency regulations are for the "old waiver" and will expire October 17, 2002
12VAC30-120-216 through 219	Reserved	Reserved
12VAC30-120-221 through 229	Reserved	Reserved
12VAC30-120-231 through 239	Reserved	Reserved
12VAC30-120-240	Covered services and limitations	Repealed. The emergency regulations are for the "old waiver" and will

		expire October 17, 2002. Subpart 2, 'Covered services, limitations and related provider requirements' separates each covered service into a separate VAC for more clarity and specificity. Subpart 2 includes VAC 241-249 and 251-255
12VAC30-120-241	NA	Assistive technology; added for more clarity and specificity.
12VAC30-120-242	NA	New services included in new waiver: Agency directed companion services. Emergency regulation language was revised to conform with waiver application language.
12VAC30-120-243	NA	New services included in new waiver: consumer directed personal assistance services, companion services, and respite services. Language has been revised to more clearly indicate that these are *consumer* directed services.
12VAC30-120-244	NA	Crisis stabilization services: added for more clarity and specificity.
12VAC30-120-245	NA	Day support services: added for more clarity and specificity.
12VAC30-120-246	NA	Environmental modifications: added for more clarity and specificity.
12VAC30-120-247	NA	Personal assistance services: added for more clarity and specificity.
12VAC30-120-248	NA	New services included in new waiver: personal emergency response system: added language to prohibit direct marketing to individuals, family/caregivers and providers.
12VAC30-120-249	NA	Pre-vocational services; reinstated per new waiver.
12VAC30-120-251	NA	Residential support services: added for more clarity and specificity. Deletes references to assisted living facilities failing to secure the new license within the designated time period; the designated time period will have lapsed by the implementation date of the proposed regulations.
12VAC30-120-252	NA	Respite services: added for more clarity and specificity.

12VAC30-120-253	NA	Skilled nursing services: added for more clarity and specificity.
12VAC30-120-254	NA	Supported employment services: added for more clarity and specificity.
12VAC30-120-255	NA	Therapeutic consultation: added for more clarity and specificity.
12VAC30-120-256 and 257	NA	Reserved
12VAC30-120-250	Reevaluation of service need and utilization review	Repealed. These emergency regulations are for the "old waiver" and will expire October 17, 2002.
12VAC30-120-258	NA	Urgent criteria. This section was added to develop and implement consistent statewide criteria for the handling of the waiting lists for individuals determined to meet the eligibility criteria for waiver services.
12VAC30-120-259	NA	Reevaluation of service need and utilization review; replaces 12VAC30-120-250 per new waiver and State assurances to CMS. Language has been revised to reflect that the re-evaluation of services is individual-centered.

General Changes throughout regulations based on public comment include the following:
Delete "recipient", "client" and "consumer": insert "individual"
Delete "aide": insert "assistant"
Delete "care": insert "services"
Delete 'facilitation provider": insert 'facilitator'
Delete "contract": insert "participation agreement"
Subpart B: language revisions have been made to conform with the waiver application as well to ensure internal consistency within the regulations themselves.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

DMAS anticipates that the regulations will have positive impact on the institution of the family and family stability. The regulations are required in order to allow DMAS to fully implement the new MR Waiver as approved by the CMS and to uphold the assurances made by the Commonwealth to CMS. Without the regulations, DMAS risks loss of continued federal approval of the waiver, and loss of the related federal funding; this would result in the termination of services for the individuals who have become dependent on them in order to avoid institutionalization.

The regulations may assist families and individuals with strengthening the authority and rights of parents in the education, nurturing, and supervision of their children. By ensuring the consumer-directed component of the waiver services, individuals and their families may tailor services to meet their unique and specific needs in the areas of scheduling (i.e., weekends and evenings), cultural diversity, and personal preferences. The option of participating in consumer directed services encourages individuals and families to increase their self-sufficiency and the assumption of responsibility for themselves, their families, and their care. Exercising this option may lead to increasing self-pride.

Increasing the work allowance for waiver individuals permits those persons who are capable of paid employment to retain more of their earnings, rather than having to contribute more to their costs of care. They will be able to defray some of the costs of such employment (appropriate clothing, transportation, meal expenses, etc.) and be more likely to contribute to household expenses. Employment, contributing to household expenses, and increasing one's responsibility for care management can all lead to enhanced self-sufficiency, self-pride, and additional assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.