



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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**12 VAC 30-120 – Elderly or Disabled with Consumer Direction Waiver**  
**Department of Medical Assistance Services**  
March 30, 2011

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### **Summary of the Proposed Amendments to Regulation**

The proposed regulations will 1) allow Licensed Practical Nurses to supervise personal care aides under agency-directed personal care and respite care services, 2) allow providers more time to secure service verification signatures, 3) permit providers to document reasonable variances from waiver individuals' plans of care, 4) allow longer periods of time between nurse supervisory visits, 5) include provisions for electronic information exchange between the local departments of social services, the Department of Medical Assistance Services, and enrolled service providers for determination of the patient pay requirement for waiver services, 6) require fiscal agent instead of service facilitator to obtain criminal record checks for personal care aides in consumer-directed services, 7) allow involuntary disenrollment from consumer directed model if consumer directed services are not working well for a recipient, 8) incorporate provisions for person-centered planning, 9) re-organize the existing requirements to be consistent with other waiver regulations, 10) pursuant to Item 297 YYY, Chapter 297 of the 2010 Acts of Assembly, add language to reduce annual limit an individual can receive from \$5,000 to \$3,000 for environmental modifications and assistive technology.

### **Result of Analysis**

The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

### **Estimated Economic Impact**

The Elderly or Disabled with Consumer Direction (EDCD) Waiver program is established under section 1915(c) of the federal Social Security Act, which encourages the states

to provide home and community based services as alternatives to institutionalized care. The EDCD Waiver program provides supportive services in the homes and communities of persons who are elderly or disabled. The main purpose of waiver programs is to prevent or delay placement of persons in institutions by providing care for individuals in their homes and communities consequently avoiding high long term care costs. States wishing to implement such waiver programs are required to demonstrate that the costs would be lower under a waiver than the related institutional placement. The EDCD Waiver program currently serves approximately 18,385 individuals.

One of the proposed changes will allow Licensed Practical Nurses (LPN) to supervise personal care aides under agency-directed personal care and respite care services. Currently, only Registered Nurses (RN) are allowed to supervise personal care aides in this waiver. According to Department of Medical Assistance Services (DMAS), nurse licensure rules allow LPNs to perform this task. With the proposed change, an agency will be able to have their LPNs to supervise personal care aides. Considering compensation of RNs is significantly greater than that of LPNs, the providers are likely to shift this task, if they can, from RNs to LPNs to reduce their costs.<sup>1</sup> A reduction in the quality of personal care aide services is not expected as the nurse licensure rules indicate competency of LPNs in performing this task.

Another proposed change will allow providers additional seven days to secure service verification signatures. Currently, if service verification signatures are not collected by the end of the week when the services are rendered, DMAS denies payment. By allowing more time to collect signatures, the proposed regulations are expected to reduce the amount of payments that must be recovered from the providers following an audit.

The proposed changes will also permit providers to document reasonable variances from waiver individuals' plans of care. Currently, if services are not provided according to the individual's plan of care, DMAS denies payment. Under the proposed changes, providers will be allowed to depart from the plan of care if it is reasonable to do so. This change recognizes that an individual's needs may change rapidly requiring a departure from the plan of care. Also, by

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<sup>1</sup> According to U.S. Bureau of Labor Statistics, 2009 mean annual compensation in Virginia was \$63,270 for Registered Nurses and \$37,950 for Licensed Practical Nurses.

allowing reasonable variances, the amount of payments that must be recovered from the providers following an audit is expected to decline.

One of the proposed changes will allow longer periods of time between nurse supervisory visits. Currently, providers are required to have a nurse visit their patients with a cognitive impairment once at least every 30 days and others once at least every 90 days. According to DMAS, some of the recipients with a cognitive impairment are very stable and do not require frequent visits. The proposed changes will allow the providers discretion to reduce the frequency of nurse visits to patients with cognitive impairment to once at least every 90 days if their health status allows it. A reduction in the number of nurse visits is expected to reduce compliance costs of providers.

The proposed regulations also include DMAS' conversion to an electronic information exchange between the local departments of social services, DMAS, and enrolled EDCD service providers for determination of the patient pay requirement for waiver services. Electronic exchange of patient pay information is expected to reduce administrative costs associated with distribution of paper copies.

Another proposed change will shift the responsibility of obtaining criminal record checks for personal care aides in consumer-directed services from service facilitators to fiscal agents. Service facilitators train recipients for managing certain responsibilities associated with the consumer-directed service delivery mode such as hiring, firing, and managing health professionals providing a service. Fiscal agents perform fiscal functions such as processing payroll, calculating withholdings, and filing tax forms associated with employment of health professionals hired by the recipient. With the proposed changes, criminal record check responsibility will be transferred from service facilitators to fiscal agents. Thus, an increase in the administrative costs of fiscal agents and a corresponding decrease in the administrative costs of service facilitators are expected. No reduction in the reimbursement rate for service facilitation services is proposed as a result of this change. However, fiscal agent services are performed by a contracted provider. Thus, the fiscal agent contractor may request an increase in the contract price as a result of the added administrative responsibility of performing criminal background checks.

The proposed changes will also allow involuntary disenrollment from consumer directed model if consumer directed services are not working well for a recipient. Currently, DMAS does not have the ability to move recipients into the agency directed model if the recipient fails to comply with the requirements of the consumer directed model or if there are health and safety risks to the recipient under the consumer directed model. For example, if the recipient is consistently unable to manage the assistant and has a pattern of discrepancies in time sheets of his or her assistant, DMAS will have the authority to provide services to that individual under the agency directed model.

Currently, there are about 7,036 people in this waiver who are using the consumer directed model of service delivery. DMAS expects the number of persons being removed involuntarily to be very small, 0.5% to 1.0% of those persons who use this service model. Consequently, it is estimated that 35 to 70 persons may be affected by this change. Generally, the rates for agency directed services are higher than the rates paid in consumer directed services.<sup>2</sup> Thus, removing individuals from consumer directed model to agency directed model has the potential to increase expenditures. However, prevention of non-compliance with the requirements of consumer directed model may create fiscal savings and/or improve health and safety of recipients.

The proposed changes also incorporate provisions for person-centered planning. According to DMAS, Centers for Medicare and Medicaid Services (CMS) now requires that states use person centered planning (PCP) in their waiver programs to ensure that individuals enrolled in the state's home and community based waivers fully participate in the planning for their services and supports. Person centered planning goes beyond the traditional individualized planning processes used in the waiver. The person centered approach relies much less on the service system and focuses on the individual receiving waiver services and supports. To accomplish PCP across Virginia, these regulations incorporate the essential definitions and activities needed to implement PCP.

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<sup>2</sup> The rates for Companion Care, Personal Care, and Respite Care under consumer directed model for Northern Virginia are \$11.47 and the rates under agency directed model for Northern Virginia are \$15.20; the rates under consumer directed model for the rest of the state are \$8.86 and the rates under agency directed model for the rest of the state are \$12.91.

In addition, the proposed regulations re-organize the existing requirements to be consistent with the other waiver regulations. The proposed reorganization is expected to make it easier to locate requirements and improve clarity.

Furthermore, pursuant to Item 297 YYY, Chapter 297 of the 2010 Acts of Assembly, the proposed regulations include language reducing annual limit an individual can receive from \$5,000 to \$3,000 for environmental modifications and assistive technology effective July 1, 2011. However, the funding for this change has been restored by the 2011 Acts of Assembly. DMAS plans to remove this language through a separate exempt regulatory action. Thus, no significant economic effect is expected from this language.

## **Businesses and Entities Affected**

Currently, approximately 18,385 individuals are utilizing waiver services. The waiver services are provided by about 3,741 providers which include personal care agencies, respite care agencies, adult day care centers, transition coordinators, service facilitators, and durable medical equipment providers.

Also, there are 122 local departments of social services making eligibility determinations.

## **Localities Particularly Affected**

The proposed regulations apply throughout the Commonwealth.

## **Projected Impact on Employment**

Some of the proposed changes are expected to reduce the demand for labor. These changes include allowing longer periods of time between nurse supervisory visits and including provisions for electronic information exchange for determination of the patient pay requirement for waiver services.

Some of the other changes are expected to shift the demand for labor from one group to another. These changes include allowing Licensed Practical Nurses to supervise personal care aides under agency-directed personal care and respite care services, requiring fiscal agent instead of service facilitator to obtain criminal record checks for personal care aides in consumer-directed services, and allowing involuntary disenrollment from consumer directed model.

## **Effects on the Use and Value of Private Property**

No direct effect on the use and value of private property is expected. However, some of the changes are expected to reduce compliance costs of providers and have a positive effect on their asset values. These changes include allowing Licensed Practical Nurses to supervise personal care aides, allowing providers more time to secure service verification signatures, permitting providers to document reasonable variances from waiver individuals' Plans of Care, allowing longer periods of time between nurse supervisory visits, allowing electronic information exchange for determination of the patient pay requirement for waiver services.

## **Small Businesses: Costs and Other Effects**

Most of the affected 3,741 providers are estimated to be small businesses. As discussed above, requiring fiscal agent instead of service facilitator to obtain criminal record checks for personal care aides in consumer-directed services is expected to increase administrative costs of fiscal agents and allowing involuntary disenrollment from consumer directed model is expected to reduce demand for services offered by consumer directed care providers.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

There is no known alternative method that minimizes adverse impact on small businesses while accomplishing the same goals.

## **Real Estate Development Costs**

No impact on real estate development costs is expected.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such

economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.