



COMMONWEALTH of VIRGINIA  
*Department of Medical Assistance Services*

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November 1, 2014

**MEMORANDUM**

TO: The Honorable Charles J. Colgan  
Co-Chairman, Senate Finance Committee

The Honorable Walter A. Stosch  
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones  
Chairman, House Appropriations Committee

FROM: Cynthia B. Jones   
Director, Virginia Department of Medical Assistance Services

SUBJECT: Report to Examine Access to Qualified Nurses in the  
Medicaid Technology Assisted Waiver

The 2014 General Assembly directed the Department of Medical Assistance Services (DMAS) to assess its requirement that nurses providing services for individuals within the Technology Assisted Waiver (Tech Waiver) have six months of work experience. The budget amendment proposed by Delegate Peace (item 301 KKKK), requires DMAS to *"examine access to qualified nurses by individuals eligible for waiver services and hiring, turnover and retention of nurses providing private duty nursing services through the waiver."*

Should you have any questions or need additional information, please feel free to contact me at (804) 786-8099.

CBJ/

Enclosure

pc: The Honorable William A. Hazel, Jr., MD, Secretary of Health and Human Resources

**Report to the Governor and General Assembly**  
**from the**  
**Department of Medical Assistance Services**  
**Report on Budget Amendment 301 KKKK**  
*Examine Access to Qualified Nurses in the Medicaid Technology Assisted Waiver*  
November 2014

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**Report Mandate**

The 2014 General Assembly directed the Department of Medical Assistance Services (DMAS) to assess its requirement that nurses providing services for individuals within the Technology Assisted Waiver (Tech Waiver) have six months of work experience. The budget amendment proposed by Delegate Peace (item 301 KKKK), requires DMAS to *“examine access to qualified nurses by individuals eligible for waiver services and hiring, turnover and retention of nurses providing private duty nursing services through the waiver.”*

DMAS does not collect information on home health agency hiring, turnover and retention of nurses providing private duty nursing services through the waiver. Thus, the report describes the population served by nurses in the waiver, impediments to quality nursing care, the results of the agency’s meeting with stakeholders, and the actions that will be taken to address the concerns underlying the budget amendment.

**Background**

The six month experience requirement is contained within the Centers for Medicare and Medicaid Service (CMS) approved waiver application, in regulations and within the policy manual. The CMS approved waiver states:

*Each LPN and RN must demonstrate specialized experience and proficiency with delivery of nursing care to any population which has specialized needs, e.g., a ventilator-dependent individual, prior to assignment to such an individual. Each LPN and RN must have at least six months of experience caring for an individual receiving private duty nursing under the Tech Waiver or at least intensive or specialized care experience.*

The regulation at 12VAC30-120-1740 B.4. states:

*The LPN and RN shall be licensed to practice in the Commonwealth and have at least six months experience, which may include work in an acute care hospital, long-stay hospital, rehabilitation hospital, or specialized care nursing facility.*

The Technology Assisted Waiver and Private Duty Nursing Services Manual, Chapter 2, Provider Participation Requirements, states:

*Each private duty nurse must demonstrate specialized experience and proficiency with delivery of nursing care to any population which has specialized needs (e.g., a ventilator-dependent individual) prior to assignment to such an individual. It is expected that each nurse will have at least six months of such previous experience as appropriate to the care of the technology assisted waiver/EPSTD private duty nursing recipient.*

The rationale for the requirement is rooted in concerns for the health and welfare of waiver participants and the state's responsibility to ensure that providers employed to care for them have the ability to do so. While experience does not offer a guarantee that a nurse is qualified, it recognizes the medically fragile nature of this population and that nurses serving this population are working alone and without any support or professional back up.

The amendment was the result of concerns brought by stakeholder(s) that supply home health nursing in the Medicaid Technology Assisted Waiver (Tech Waiver). Stakeholders believe the current experience requirement for nurses who work with patients using ventilators presents a barrier in hiring nurses to serve this population.

### **Profile of Waiver Participants**

There are between 300-320 individuals in Virginia's Tech Waiver Program at any given time. Of these, 65 percent are children under age 21, 33 percent are older than 21, and two percent are over 65 years of age. The bulk of waiver expenditures (96 percent) are for private duty skilled nursing services.

*"Private duty skilled nursing services" are defined in regulation 12 VAC 30-120-1700 as skilled in-home nursing services listed in the plan of care that are (i) otherwise covered under the State Plan for Medical Assistance Services home health benefit; (ii) required to prevent institutionalization (iii) provided within the scope of the Commonwealth's Nurse Practice Act and Drug Control Act of Title 54.1 of the Code of Virginia, and (iv) provided by an RN, or by an LPN under the supervision*

*of an RN, to waiver members who have serious medical conditions or complex health care needs. Skilled nursing services are to be used as hands-on member care, training, consultation, as appropriate, and oversight of direct care staff, as appropriate.*

The typical participant is a child being cared for by a parent in their home who needs assistance with specialized respiratory equipment to breathe and sustain life. These children survive with the help of a tracheotomy and, as needed, the use of a ventilator. Over 95 percent of all Tech Waiver individuals require respiratory care.

The care they receive is most often provided by licensed practical nurses (LPNs) who are supervised by registered nurses (RNs). Nurses need to be able to work quickly and efficiently with equipment to maintain the child's ability to breathe. An error can result in loss of life or a worsening of already serious conditions. The parent and the nurse must be equipped to deal with a crisis.

### **Barriers to Skilled Nursing for Tech Waiver Individuals**

There are a number of impediments to Tech Waiver individuals receiving the services they need. The primary one is the national shortage of nurses, including home health nurses. Rural and underserved areas have special difficulties attracting an adequate supply of health care professionals. Lower wages, higher levels of risk and the complexity of caring for these individuals may also discourage nurses from seeking to serve Medicaid Tech Waiver individuals.

The American Association of Respiratory Care recommends higher standards for those receiving care on ventilators than what Virginia now requires. AARC Clinical Practice Guidelines for Long-Term Invasive Mechanical Ventilation in the Home (Revised and updated in 2007) section 10.2.1 states that:

*Health care professionals capable of providing direct patient care and possessing demonstrated competencies to monitor and assess both the patient and equipment are essential. Health care professionals should be credentialed (RRT, CRT, RN) and/or licensed practitioners with documented knowledge and demonstrated competencies.*

Virginia permits LPNs who do not have credentials (registered or certified) in respiratory care. to serve individuals on the Tech Waiver.

### **Virginia's Requirements Compared to Other States and Waivers in Long Term Care**

Virginia's Elderly or Disabled with Consumer Direction (EDCD) Waiver requires that Registered Nurses providing supervision for personal care attendants to have at least two years of clinical nursing experience.

Of the states that have a Tech Waiver Program comparable to Virginia's, some have higher requirements for experience than does Virginia.

#### **Alabama** - Technology Assisted Waiver

Service: Private Duty Nursing Requirements

1. At least two years experience
2. Must submit to a program for testing, prevention, and control of tuberculosis, annually
3. Private Duty Nursing Services provided by an LPN requires supervision by a licensed RN

#### **Utah** - Waiver for Technology Dependent, Medically Fragile Individuals

Service: Skilled Nursing Respite Care:

1. Current RN license
2. Basic CPR certification
3. Demonstrate ability to perform the necessary skilled nursing functions to safely care for the recipient

#### **Kansas** - KS Technology Assisted

Service: Medical Respite Services

1. Registered Nurse (RN) or Licensed Practical Nurse (LPN)
2. Must meet licensing standard as defined by K.S.A 65-1115 and the Kansas Department of Health and Environment home health licensing requirement as specified in K.S.A 65-5101 through K.S.A. 65-5117 as applicable

Service: Health maintenance monitoring

1. Licensed Practical Nurse or Registered Nurse
2. Must have a minimum of two years nursing experience in working with individuals with special health care needs

**New Mexico** - NM Medically Fragile

Service: Private Duty Nursing

1. RNs and LPNs must be licensed by the New Mexico State Board of Nursing
2. RNs and LPNs must have a minimum of one year of supervised nursing experience; nursing experience preferably with individuals with developmental disabilities or who are medically fragile.

However, some states that cover private duty nursing for ventilator patients have no additional requirements beyond a RN or LPN license in that state. These states include Florida, Vermont, Oklahoma, Mississippi, Montana, and Massachusetts.

Virginia is a state like those listed above which has an additional experience requirement beyond the nursing license.

In addition to other states having more stringent requirements, there was a recent strengthening of CMS requirements and heightened expectations for the state to provide for the health, welfare and safety of Medicaid recipients. Any changes made by Virginia to alter existing staffing requirements will require approval by CMS to ensure health and safety standards are being met.

**Stakeholder Involvement in Resolution of the Issue**

DMAS management met with stakeholders to discuss the current requirements. Stakeholders are concerned that the requirement that includes *experience in ventilator and tracheotomy care* is problematic for them in hiring nurses to serve Tech Waiver participants. For example, one stakeholder requires one year of experience for nurses it hires. They have reported finding it increasingly difficult to recruit and hire nurses who also meet the DMAS six month specialized experience requirement. Stakeholders proposed the use of a training curriculum in lieu of six months specialized experience for the care of individuals who are on a ventilator. If the successful completion of a training program could be approved and incorporated into the CMS application, policy and regulatory language, it would provide the flexibility the stakeholders are seeking.

**Summary**

Virginia has a long standing requirement of six months specialized experience for nurses serving vulnerable adults and children in Tech Waiver. DMAS feels that the experience is necessary to reduce the risk of injury and/or death to an extremely vulnerable population kept alive through specialized equipment. At the same time, the agency wants to encourage companies to find ways to meet the demand for nursing staff to serve the Medicaid population. Providing training is a viable approach to increasing the expertise of nurses so that they can care for those served by the Tech Waiver.

Changing the requirements for nurses may require amending the waiver to seek CMS approval for modifying the specialized experience criteria. If this is necessary, the waiver amendment to reflect the proposed changes will be submitted by April 1, 2015. CMS will have 90 days to review and approve or deny the change. If the proposed changes are approved by CMS, then necessary changes to regulations and the Tech Waiver manual will take place.

If nurse requirement changes are not needed to the waiver application, DMAS will promptly proceed to make necessary policy and regulatory changes during the next calendar year.

DMAS remains committed to working with stakeholders to find a way to ensure the health and safety of those individuals receiving services through the Tech Waiver as well as meeting the needs of the industry that supports them.