



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

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MEMORANDUM

TO: The Honorable Terence R. McAuliffe
Governor of Virginia

The Honorable Thomas K. Norment, Jr.
Co-Chairman, Senate Finance Committee

The Honorable Emmett W. Hanger, Jr.
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones
Chairman, House Appropriations Committee

FROM: Cynthia B. Jones 

Subject: Report on Alzheimer's Assisted Living Waiver Work Group

The 2016 General Assembly directed the Department of Medical Assistance Services (DMAS) to convene an Alzheimer's Assisted Living Waiver work group. The 2016 Appropriation Act, Item 306 QQQQ, states:

"The Department of Medical Assistance Services shall convene a work group of stakeholders, which shall include the Department for Aging and Rehabilitative Services, dementia service providers and dementia advocacy organizations to review the Alzheimer's Assisted Living (AAL) Waiver **to determine if it can be modified to meet the 2014 Centers for Medicare and Medicaid Services Home and Community Based Services final rule requirements.** If the waiver cannot be modified to meet the federal requirements, then the department shall create a plan that: **(i) ensures current waiver recipients continue to receive services and (ii) addresses the service needs of the persons with dementia who are currently eligible for the AAL Waiver.** The department shall report its plan and implementation recommendations to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by October 1, 2016."

CBJ/
Enclosure

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

ADMINISTERING MEDICAID AND THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM IN VIRGINIA



Report to the General Assembly

Recommendations for how to best serve persons with Alzheimer's and dementia currently being served, or eligible to be served, by the Alzheimer's Assisted Living (AAL) Waiver

DMAS' mission is to provide a system of high quality and cost effective health care services to qualifying Virginians and their families.

The Medicaid program, signed into law by President Lyndon B. Johnson on July 30, 1965, celebrated its 50th year in 2015.

Medicaid is a joint federal and state program authorized under Title XIX of the Social Security Act that provides health and long-term care coverage for specific groups of Virginians with low incomes. In Virginia, Medicaid is administered by the Department of Medical Assistance Services (DMAS) and is jointly funded by Virginia and the federal government. Virginia's federal matching rate, known as the Federal Medical Assistance Percentage (FMAP) is generally 50%, so Virginia receives \$1 of federal matching funds for every \$1 Virginia spends on Medicaid.

Medicaid is primarily available to children in families with low-income, pregnant women, elderly, individuals with disabilities, and parents below strict income limits.

DMAS also administers Virginia's Children's Health Insurance Program (CHIP) known as FAMIS. FAMIS covers children and pregnant women in families earning too much to qualify for Medicaid but too little to afford private insurance.

All states must follow federal Medicaid/CHIP guidelines regarding who is covered, but set their own income and asset eligibility criteria. Virginia's eligibility criteria are among the strictest in the nation.



Report Mandate: The 2016 General Assembly directed DMAS to convene an Alzheimer's Assisted Living Waiver work group. The 2016 Appropriation Act, Item 306 QQQQ, states:

"The Department of Medical Assistance Services shall convene a work group of stakeholders, which shall include the Department for Aging and Rehabilitative Services, dementia service providers and dementia advocacy organizations to review the Alzheimer's Assisted Living (AAL) Waiver to determine if it can be modified to meet the 2014 Centers for Medicare and Medicaid Services Home and Community Based Services final rule requirements. If the waiver cannot be modified to meet the federal requirements, then the department shall create a plan that: (i) ensures current waiver recipients continue to receive services and (ii) addresses the service needs of the persons with dementia who are currently eligible for the AAL Waiver. The department shall report its plan and implementation recommendations to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by October 1, 2016."

Executive Summary Recommendations

To address this report mandate, the Department of Medical Assistance Services (DMAS) met with key stakeholders to review the AAL Waiver and the new federal regulations that govern the delivery of Medicaid-funded home and community-based services. Due to new federal requirements, the AAL Waiver will cease to operate on June 30, 2018. To ensure continuity of services for enrollees and address the services needs of others who are eligible for the AAL waiver, the work group recommended the following:

1. DMAS request a General Assembly appropriation to fund the federal financial participation (FFP) portion of AAL Waiver for individuals who: (1) are enrolled in the AAL Waiver and (2) choose to continue residing in an Assisted Living Facility (ALF) "safe and secure environment" when the AAL Waiver sunsets on June 30, 2018.
2. Under Managed Long-Term Services and Supports (MLTSS), DMAS contracts with the Managed Care Organizations (MCOs or Health Plans) should: (1) identify and describe, in detail, "core community-based dementia services" that MCOs should offer to individuals with Alzheimer's disease and dementia and their families. Further, MCOs should, through their own contracts with providers, ensure the delivery of those services as required by the DMAS-MCO contract.
3. DMAS should continue to work with federal and state partners to determine if there is a way to support individuals with Alzheimer's disease and dementia in "safe and secure environments" in ALFs that would not require compliance with the HCBS regulations. DMAS will continue to investigate other regulatory authorities under which ALF services in a "safe and secure environment" might be provided.
4. DMAS should work more closely with the Virginia Department for Aging and Rehabilitative Services (DARS), which serves as the lead agency on dementia-related activities in the Commonwealth (§ 51.5-152). Aligning the efforts of these two agencies, including two federal grant programs underway at DARS, on the development and implementation of any dementia-related supports for individuals enrolled in Medicaid and receiving LTSS will best enable the Commonwealth to meet the needs and desires of individuals with Alzheimer's disease and dementia.

Alzheimer’s Assisted Living (AAL) Waiver Background

The AAL Waiver provides assisted living facility services to individuals aged 55 and over who are financially eligible for Medicaid and meet the nursing facility (NF) level-of-care criteria. The AAL Waiver was first approved by CMS in 2006 to serve up to 200 individuals. Individuals must reside in an approved ALF’s “safe and secure environment” (licensed by Virginia Department of Social Services ((VDSS)). Individuals must also be receiving an Auxiliary Grant (AG); have a diagnosis of Alzheimer’s disease or a related dementia; and have no diagnosis of serious mental illness or intellectual disability or a VDSS-identified prohibited condition to reside in an ALF.

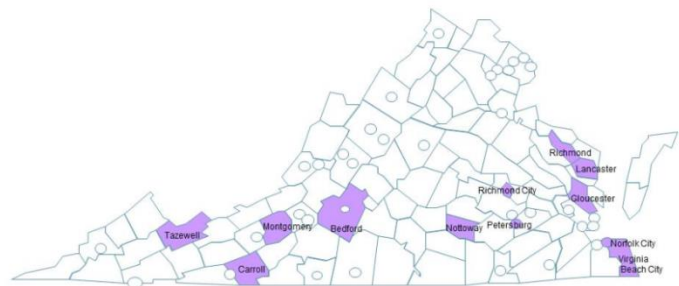
AAL Waiver services include 24-hour on-site response staff to meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence, and to provide supervision, safety and security. AAL Waiver services also include medication administration by registered licensed health care professionals or a medication aide, individual summaries (or assessments) by licensed healthcare professionals, skilled nursing services, coordination of services and therapeutic, social and recreational programming.

Individuals in the AAL Waiver are supported through two funding streams. The AG program funds room and board with up to \$1,219 a month in AG funds (\$1,402 for northern Virginia localities) while the AAL Waiver pays for services. Medicaid reimbursement for services is \$49.50 per day. Enrollment has ranged from a low of 10 (in the first year) to a high of 59 individuals over the last decade (DMAS FLASH report, point-in-time analysis, March of each year). The AAL Waiver annual cost per beneficiary was \$11,457, totaling \$836,332 in expenditures for SFY 15. (DMAS Budget Waiver Report). The average length of enrollment in the AAL Waiver was 555 days (VAMMIS waiver enrollment data).

There are 12 active AAL Waiver providers who have provider agreements with DMAS and accept individuals in the AAL Waiver. More broadly, there are 547 ALFs in Virginia, 279 ALFs that accept the AG and 158 ALFs that have “safe and secure environments” (June 30, 2016 VDSS Licensing report). Most AAL Waiver providers limit the number of Medicaid waiver individuals they will accept, and large areas of the Commonwealth have no providers.

Localities with AAL Waiver Providers

Bedford	Norfolk City
Carroll	Petersburg
Gloucester	Richmond
Lancaster	Richmond City
Montgomery	Tazewell
Nottoway	Virginia Beach City



Home and Community Based Services Regulations

In 2014, the U.S. Centers for Medicare & Medicaid Services (CMS) issued Home and Community-Based Services (HCBS) regulations. These regulations establish required qualities of Medicaid HCBS waiver settings. According to the HCBS regulations’ settings provision (**42 CFR § 441.301(c)(4)(5)**), the following characteristics must be present in all settings where HCBS are provided in order for a setting to be considered Home and Community Based (HCB):

- It is integrated in and supports full access to the greater community;
- It is selected by the individual from among a variety of setting options;
- It optimizes autonomy and independence in making life choices;
- It facilitates individual choice in selecting both services and service providers; and,
- It ensures individuals rights of privacy, dignity, respect, and freedom from coercion and restraint.

In addition, individuals living in provider-owned or operated residential settings, which include AAL Waiver settings, must:

- Have a lease or other signed legally enforceable agreement providing similar protections;
- Have access to privacy in their sleeping units;
- Have entrances lockable by the individual, with keys provided to appropriate staff as needed;
- Have a choice in selecting their roommate(s), if they share a room;
- Have the freedom to decorate and furnish their sleeping and/or dwelling unit;
- Have the ability to control their daily schedules and activities and have access to food at any time;
- Be able to have visitors at any time; and,
- Be able to physically maneuver within the setting (e.g., setting is physically accessible).

CMS requires all states to bring Medicaid HCBS settings into full compliance with the HCBS regulations' settings provision by March 17, 2019. To this end, the HCBS regulations require that states review and assess all Medicaid HCBS settings compliance status. States must detail the outcomes of these assessments for CMS in a Statewide Transition Plan (STP) that details the state's activities to remediate non-compliant settings and/or transition individuals to fully compliant settings by March 2019. Settings that are not fully compliant by March of 2019 cannot be reimbursed by Medicaid for the provision of Medicaid HCBS.

Among the findings and compliance determinations made by the Commonwealth is that **the AAL Waiver settings do not comply with the HCBS regulations and cannot be modified to meet them**. This determination was included in Virginia's revised STP submitted to CMS on April 29, 2016.

Finding of Noncompliance with HCBS Regulation

To determine compliance status, DMAS staff conducted site specific assessment activities at each of the 12 identified AAL Waiver settings. The site specific assessment included:

- the completion of an on-site assessment checklist;
- forms and policy review;
- observations of services, interactions and activities;
- in-person interviews with individuals and staff; and,
- phone interviews with family members/emergency contact representatives for AAL Waiver participants.

Two key findings influenced the determination of non-compliance. AAL Waiver services are provided:

- 1) in "safe and secure environments" (commonly referred to as "secure" or "locked" memory care units) in ALFs as a condition of enrollment and those "safe and secure environments" use locking devices in which individuals do not have access to other parts of the ALF or the greater community, and
- 2) services (waiver and non-waiver) are provided almost exclusively in the setting and by the ALF staff or ALF-established contractors.

DMAS has concluded that to bring each site into compliance with HCBS regulations the required changes in policy, practice and environment are not reasonably achievable. If attempted, efforts would likely result in a continued non-compliance determination by CMS. DMAS discussions with CMS result in this same conclusion. The regulations and STP may be found at: http://www.dmas.virginia.gov/Content_pgs/hcbs.aspx.

Work Group Discussions

In accordance with the report mandate, DMAS convened a work groupⁱ to determine if settings could be modified to comply with the HCBS regulations. The work group reviewed the settings provision of the HCBS regulations, Virginia's STP, and the determination that the AAL Waiver is non-compliant. While not all concurred with the determination, most work group members understood the constraints in complying with the HCBS regulations and the technical assistance CMS provided. Next, the work group explored alternative ways to support individuals and families currently served by the AAL Waiver as well as those eligible for it.

Three possible strategies were explored:

Strategy 1: Maintain the health and safety of those currently in the waiver through a budget request for state only funds to permit the individuals currently in the AAL Waiver to remain in the setting with state funds. This would require additional state funding to implement. DMAS would need to determine the cost of this option in 2017. State funds would need to begin in State Fiscal Year (SFY) 2019.

Strategy 2: Serve individuals with Alzheimer’s disease and dementia in the community as well as “safe and secure environments” in ALFs through the State Plan for Medical Assistance Services. This would require additional state funding to implement. DMAS would need to determine the cost and feasibility for this option during 2017. DMAS would need to implement this option in SFY 2019.

Strategy 3: Include in the Elderly or Disabled with Consumer Direction (EDCD) Waiver enhanced services to maintain and support individuals with Alzheimer’s disease and dementia in their homes and communities for a longer period of time. The EDCD Waiver will be included in the Commonwealth Coordinated Care Plus (CCC Plus) managed care program in July 2017.

The work group identified the following core services and supports that would increase HCBS options for individuals with Alzheimer’s and dementia and their families:

- A valid/reliable assessment tool to determine cognitive status, as well as a way to identify people for assessment;
- Personal Emergency Response System (PERS) with gyroscopes rather than those requiring manual activation;
- GPS tracking devices for missing persons;
- Personal care, to include supervision, for up to 10 hours per day to cover time away from home for a family caregiver who works or to otherwise move closer to 24/7 supervision;
- Medication management, specifically for persons with dementia;
- Increased medical oversight of waiver services and staff; and
- Family supports, such as counseling and training, similar to those provided through DARS’ federal grant offering (Family Access to Memory Impairment and Loss Information, Engagement and Support (FAMILIES) program).

DMAS will continue to work with stakeholders to determine if any of the other services or supports described above can be accommodated within the current EDCD Waiver service delivery framework. If it is determined additional general funds are required to implement, projected costs will be determined for consideration during the 2018 General Assembly session for possible implementation during SFY 2019.

Summary

The requirements to bring the 12 ALFs providing AAL Waiver services to 59 individuals into compliance with the HCBS regulations cannot be reasonably achieved. Renewing the AAL Waiver in 2018 is not a viable option. DMAS will continue to explore phasing the small number of people currently served by the AAL Waiver into other service delivery options. In addition, DMAS is also committed to continuing to work with stakeholders to identify or create and implement new services to serve individuals if authorized and funded by the General Assembly prior to the termination of the AAL Waiver.

It is worth noting that CMS has stated that it intends to provide additional guidance to states on *if* or *how* individuals with Alzheimer’s disease and dementia may receive services in settings that limit egress (exit) while complying with the HCBS setting provisions. This guidance was not available at the time this report was prepared.

ⁱ Work group members: Virginia Alzheimer’s Association, Virginia Alzheimer’s Disease and Related Disorders Commission, and a family member caring for a parent with Alzheimer’s, Virginia Assisted Living Association, Leading Age, Virginia Association of Area Agencies on Aging, Virginia Association for Home Care and Hospice, Virginia Health Care Association/ Virginia Center for Assisted Living, Virginia State Long-Term Care Ombudsman, Virginia Department for Aging and Rehabilitative Services, Virginia Department of Social Services Licensing Division, Virginia League of Social Service Executives, and Virginia Beach Department of Human Services CSB.