



# COMMONWEALTH of VIRGINIA

## *Department of Medical Assistance Services*

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November 9, 2020

### MEMORANDUM

TO: The Honorable Janet Howell  
Chairman, Senate Finance Committee

The Honorable Luke E. Torian  
Chairman, House Appropriations Committee

Mr. Daniel Timberlake  
Director, Department of Planning and Budget

FROM: Karen Kimsey  
Director, Virginia Department of Medical Assistance Services

SUBJECT: Center-Based Respite Workgroup

This report is submitted in compliance with the Virginia Acts of the Assembly – Item 313.0000. of the 2020 Appropriation Act, which states:

*The Department of Medical Assistance Services (DMAS) shall convene a workgroup of stakeholders to include representatives of Jill's House, SOAR 365, Virginia Sponsored Residential Provider Group, The Virginia Association of Community Services Boards, the Virginia Network of Private Providers and the Department of Behavioral Health and Developmental Services to review the existing and any proposed regulations governing the provision of respite or personal assistance services to determine the barriers to the provision of these services in a center or residential setting other than the individual's home. DMAS shall consider the option of basing the reimbursement for center-based respite and personal assistance on the Level/Tier as determined by the individual's Supports Intensity Scale score. DMAS shall report on the conclusions of the workgroup to the Chairs of House Appropriations and Senate Finance and Appropriations Committees by December 1, 2020, including whether the department needs emergency regulatory authority to make changes in order to minimize barriers to services and support broader utilization of the identified services.*

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

Enclosure

Pc: The Honorable Daniel Carey, M.D., Secretary of Health and Human Resources

# Center-Based Respite Workgroup

A Report to the Virginia General Assembly

December 1, 2020

## Report Mandate:

*Item 313.0000 in the 2020 Appropriation Act states “The Department of Medical Assistance Services (DMAS) shall convene a workgroup of stakeholders to include representatives of Jill’s House, SOAR 365, Virginia Sponsored Residential Provider Group, The Virginia Association of Community Services Boards, the Virginia Network of Private Providers and the Department of Behavioral Health and Developmental Services to review the existing and any proposed regulations governing the provision of respite or personal assistance services to determine the barriers to the provision of these services in a center or residential setting other than the individual’s home. DMAS shall consider the option of basing the reimbursement for center-based respite and personal assistance on the Level/Tier as determined by the individual’s Supports Intensity Scale score. DMAS shall report on the conclusions of the workgroup to the Chairs of House Appropriations and Senate Finance and Appropriations Committees by December 1, 2020, including whether the department needs emergency regulatory authority to make changes in order to minimize barriers to services and support broader utilization of the identified services.”*

## Background

Personal Assistance Services (sometimes referred to as Personal Care) is direct support (or supervision) with daily activities, access to the community, monitoring the self-administration of medication or other medical needs, and monitoring health status and physical condition.

Respite service is temporary, substitute care that is normally provided on a short-term basis for temporary relief of the unpaid primary caregiver. Respite service enables an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

Both services may be provided in an individual’s home, the family home, or in community settings. They may be through an agency-directed model, where a provider agency arranges for a trained employee to provide care to the person; they may also be through consumer-direction, where respite is provided in individuals’ homes versus a congregate setting.

## Actions Taken To Date

On Monday, April 20, 2020, DMAS met with Jennifer Fidura, Executive Director of Virginia Network of Private Providers (VNPP) to gain a deeper understanding of the concerns that sparked the budget bill mandate. VNPP requested the language amendment to the budget under which this group was developed.

Subsequently, DMAS hosted stakeholder workgroup meetings on May 5, 2020 and June 4, 2020. In addition to DMAS waiver program staff, the meetings were attended by representatives from the Department of Behavioral Health and Developmental Services (DBHDS), VNPP, Jill’s House, and SOAR 365. As the process evolved, stakeholder involvement expanded to include Virginia Association of Community Services Boards (VACSB) and Virginia Sponsored Residential Provider Group. The workgroup focused on

## About DMAS and Medicaid

**DMAS’s mission is to improve the health and well-being of Virginians through access to high-quality health care coverage.**

DMAS administers Virginia’s Medicaid and CHIP programs for more than 1.6 million Virginians. Members have access to primary and specialty health services, inpatient care, behavioral health as well as addiction and recovery treatment services. In addition, Medicaid long-term services and supports enable thousands of Virginians to remain in their homes or to access residential and nursing home care.

Medicaid members historically have included children, pregnant women, parents and caretakers, older adults, and individuals with disabilities. In 2019, Virginia expanded the Medicaid eligibility rules to make health care coverage available to more than 400,000 newly eligible, low-income adults.

Medicaid and CHIP (known in Virginia as Family Access to Medical Insurance Security, or FAMIS) are jointly funded by Virginia and the federal government under Title XIX and Title XXI of the Social Security Act. Virginia generally receives a dollar-for-dollar federal spending match in the Medicaid program. Medicaid expansion qualifies the Commonwealth for a federal funding match of no less than 90 percent for newly eligible adults, generating cost savings that benefit the overall state budget.

barriers to respite and personal assistance services, and provided a platform for stakeholders to address their concerns related to the existing proposed respite regulations.

DMAS considered both personal assistance and respite services; however, the principal concern became respite. As such, the workgroup adjusted its focus primarily to the respite services' regulations. Stakeholders, DMAS and DBHDS collectively conducted a thorough evaluation of the proposed permanent Developmental Disabilities (DD) waiver regulation 12 VAC 30-122-490, through email correspondence among the respective parties. The two meetings yielded a draft blueprint for reengineering the proposed respite regulation, which reflects nuances of both home-based and center-based respite services.

## GENERAL BARRIERS IDENTIFIED

- 1) The model for both respite and personal care services in the DD and Commonwealth Coordinated Care (CCC) Plus waivers was designed for home-based services; it failed to consider how these services may also be an integral support to individuals and their families/caregivers in a center-based facility setting.
- 2) The language in the currently repealed DD waiver regulation 12 VAC 30-120-768 (Personal Care and Respite Care Services) presented problems, because it led to negative outcomes for center-based providers following their own care model. Their center-based model did not always line up with the regulation when under DMAS Quality Management Review. The proposed permanent regulation outlined in 12 VAC 30-122-490 (Respite Service) likewise created similar challenges. These were viewed in the two meetings as creating barriers to the services in a center or residential setting. Both Jill's House and SOAR 365 are licensed to provide Agency Directed respite services, as are a number of other residential providers who utilize Group Homes or Sponsored Residential Homes for this purpose. The business model used by both providers is that individuals in their care, are routinely picked up from school or other non-home-based settings and taken to a location (other than the family home) where respite services are provided. Therefore, regulatory requirements based upon the traditional model of service delivery in the family home create operational challenges.

As the workgroup reviewed the proposed regulation, the members identified three key areas in need of change:

- 1) Providing Clarity – in some instances the regulatory language may not present an obvious barrier, but it may have created misunderstanding. There was a need for clarification on different issues.
- 2) Substantive Changes – some changes are needed that represent a considerable shift from previous thought and practice.
- 3) Process Improvements – some processes defined in the regulations need to be reengineered to create better efficiencies.

## PROVIDING CLARITY

- DMAS addressed the prohibition on providing skilled nursing services in conjunction with respite services. Agency staff explained that because skilled nursing services are separate service, they cannot be delivered in combination with respite services.
- Supervisory session vs. supervisory visit: DMAS/DBHDS were able to clarify these discrepancies (\*see "Substantive Changes" below for additional discussion related to this issue).
  - The 'supervisory session' is specific to the training and ongoing supervision of a direct support professional/respite attendant.
  - The 'supervisory visit' is designed to place the supervisor or designee in a position to observe and document the required information for the individual's initial and ongoing assessment.

## SUBSTANTIVE CHANGES

- Additional language references to 'center/facility-based' were added to the regulation in order to address the center-based models for Jill's House, SOAR 365 and other Residential Providers.
- CCC Plus Waiver regulations for 12 VAC 30-120-925 (Respite Coverage in Children's Residential Facilities) were updated to include additional exceptions from the requirements of home and community-based respite providers:
  - An assessment shall be conducted at the onset of each stay rather than assessments conducted based on set timeframes for home and community-based respite providers.
  - The review of utilization shall occur at the facility and not in the individual's home.
- \*Supervision and documentation:

- The requirements for documentation will reflect that the service is provided at 1) a center-based respite service location; or 2) a family home.
- Documentation requirements for a center-based respite service provider will now more closely align with the particular setting. Respite services delivered from a center, group home or sponsored residential site will document the individual's arrival and departure times rather than the staff's arrival/departure times. In addition, center-based respite providers will be required to document episodic versus daily signatures of the individual or individual's family caregiver, recorded on the last day of service delivery to verify receipt of services.
- Both the DD and CCC Plus Waiver manuals will be revised to reflect the added 'center-based' language. The CCC Plus Waiver manual will also include process improvements and form instructions for 'center-based' providers in the next update.

## PROCESS IMPROVEMENTS TO STREAMLINE

- Initial assessment process: the group identified the opportunity to coordinate initial assessments for individuals requesting both respite and personal assistance service, rather than managing the initial assessment per each service individually.
  - The process may now be conducted to address the required assessments simultaneously.
- CCC Plus DMAS 90 form(s): the current process involves obtaining signatures of the parent/guardian on each form completed by each attendant at the conclusion of each utilization. In a center-based setting this may involve multiple attendants; this is the case where the respite stay lasts through the weekend. The following changes will be made:
  - DMAS will include an instruction for center-based respite providers to attach a supplemental document that enables each staff member to write a brief observation and note with a line for their respective dated signatures.
  - On the actual DMAS-90 form, the supervisor will make a notation of "See Attachments." The family/caregiver will then sign the DMAS-90 form upon reviewing all corresponding supplemental documents.

Finally, DMAS considered a rebasing of the reimbursement for DD waiver, center-based respite and personal assistance using the Level/Tier methodology as determined by the individual's Supports Intensity Scale® results. While rebasing the rate was raised as an issue during the workgroup's meetings, the members believed that some edits to the respite regulations could adequately address the concern for the present. Changes to personal care or respite reimbursement structure would require extensive changes in rate methodologies and service descriptions, including waiver amendments typically requiring a lengthy process due to fiscal impact. With these considerations in mind, the group elected to focus on existing regulations to improve current methods of center-based operations.

DMAS drafted proposed language changes based upon the group's recommendations. The proposed changes were then forwarded to all stakeholder participants for review on June 17, 2020. The workgroup put forth a final recommendation to rework the flow of the proposed regulation. Readers using the current proposed regulation could find it difficult to follow while moving between center-based and community-based, as well as consumer-directed and agency-directed. As such, the regulation flow was streamlined in an effort to lessen the confusion between these elements. The final recommendations were included in the proposed permanent DD waiver regulations in August and are being reviewed through the regulatory process.