

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 460

An Act relating to medical assistance services; consumer-directed care.

[S 1008]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. § 1. Medical assistance services; consumer-directed care waiver.

A. The Department of Medical Assistance Services shall prepare and may seek approval of an application for (i) a revision of the consumer-directed personal care services waiver to allow spouses, parents, adult children, and guardians to direct care on behalf of the waiver recipient, when such recipient is incapable of directing such care on his own behalf and (ii) a new waiver for home- and community-based services, as soon as such waiver template shall become available. Any such waiver revision or new waiver shall be cost-neutral and shall expand consumer-directed care in so far as practicable. Any such waiver application shall protect the health and safety of recipients as well as the fiscal integrity of the Commonwealth. Such waiver shall provide for a fiscal agent to handle tax issues and payment of personal attendants on the part of recipients. In addition, any such waiver application shall (i) provide recipients with flexible choices and personal independence in so far as possible and (ii) include provisions for family members to deliver the covered services when consistent with and not prohibited by federal law and regulation.

B. Neither this act nor any new or revised project that may be, but is not required to be, implemented pursuant to this act shall be construed as creating any legally enforceable right or entitlement to consumer-directed care, the Virginia Plan for Medical Assistance Services, or Title XIX of the Social Security Act, as amended, on the part of any person or to create any legally enforceable right or entitlement to participation in any consumer-directed care by any person.

2. That, upon the approval by the Centers for Medicare and Medicaid Services of any application for revision of the consumer-directed personal care services waiver or for any new waiver that may be submitted by the Department of Medical Assistance Services pursuant to this act, expeditious implementation of any revised or new consumer-directed care services shall be deemed to be an emergency situation pursuant to § 2.2-4002 of the Administrative Process Act; therefore, to meet this emergency situation, the Board shall promulgate emergency regulations to implement the provisions of this act.

3. That, in order to avoid costs as much as possible during the regulatory process, the Board of Medical Assistance Services shall, when in compliance with the Administrative Process Act (§ 2.2-4000 et seq.), notify, distribute, and provide public access and opportunity for comment via electronic media, including, but not limited to, posting documents to and receiving comments via the Department's website, by e-mail and fax. The Board shall, however, continue to provide public notice and participation to those persons who do not have access to the Internet or other forms of electronic media.