

DATE: October 6, 2022
TO: Medicaid and Adult Services Staff
FROM: Nichole Martin, Director, Office of Community Living, Department of Medical Assistance Services (DMAS)
SUBJECT: Legally Responsible Individuals (Spouses and Parents of Minors) Ability to Provide the Personal Care Service Paid by Medicaid
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The purpose of this broadcast is to inform Local Agencies of the status of rules regarding legally responsible individuals (spouses and parents of minors) in Virginia's 1915(c) Home and Community-Based Services waivers during the Public Health Emergency (PHE) and beyond.

As part of the COVID-19 pandemic response, the Virginia Department of Medical Assistance Services (DMAS) received approval from the Centers for Medicare and Medicaid Services (CMS) to permit legally responsible individuals (spouses and parents of minors) to provide the personal care service to those who receive the service under Virginia's 1915(c) Home and Community-Based Services waivers. This allowance applies to both personal care aides hired through a personal care agency and consumer-directed attendants. Legally responsible individuals must meet all of the same requirements as other aides/attendants. This provision applies to the personal care service only and only for individuals who are on one of the appropriate 1915(c) Home and Community-Based Services waivers. It does not apply to individuals under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit program nor to the respite and companion services.

DMAS's current rules for legally responsible individuals are tied to the federal government's Public Health Emergency (PHE) declaration. When the federal government announces an end to the PHE, this provision, as it is in its current form, will end six months after that date. Virginia has not yet received final guidance from the Centers for Medicare & Medicaid Services (CMS) regarding full unwinding methodology and plans relative to the PHE; however, CMS has indicated that they will provide states with a 60-day notice of unwinding requirements. Please be assured that communications will be made available when plans for moving ahead are disclosed, and authorized for distribution. Once this end date is known, DMAS will share the confirmed date to providers, constituents, managed care organizations (MCO), and fiscal-employer agents (F/EA) at least 60 days in advance. It is important that providers and constituents wait for official communication from DMAS regarding this end date.

In item 304.PPPP of the 2022 Budget, the General Assembly authorized the provision of legally responsible individuals to provide personal care after the federal PHE is over "when circumstances prevent an individual from being cared for by a non-parent caregiver". CMS requires that legally responsible individuals provide "extraordinary care" in order to be compensated for providing personal care. DMAS and CMS will engage in discussions on parameters that will define the "extraordinary care" and the rules, procedures, and guardrails to ensure that federal requirements are being met to support these waiver individuals receiving the personal care service. DMAS will share with affected providers, F/EAs, MCOs, and constituents any potential changes, rules, requirements, or necessary documentation surrounding this change to services following authorization by CMS. Until such time, providers and constituents should continue to operate under existing guidelines for legally responsible individuals as part of the COVID-19 PHE response.

For questions relating to this legally responsible individuals provision or the CCC Plus 1915(c) waiver, please contact cccpluswaiver@dmas.virginia.gov. For questions relating to the DD Waivers, please contact DDwaiver@dmas.virginia.gov. For LTSS screening-related questions, please contact screeningassistance@dmas.virginia.gov.