

Upcoming Changes to Paid Family Caregiver Policies

As you know, Virginia's Medicaid program is in the process of implementing a permanent policy to enable parents of children receiving personal care services to be paid as their caregiver. Prior to the COVID-19 pandemic, this type of flexibility was not allowed under federal rules. During the pandemic, the federal government permitted states to allow this flexibility, and Virginia was one of the states that took advantage of this to support these families.

Now that some states, like Virginia, are making this flexibility permanent, the federal agency that oversees Medicaid, the Centers for Medicare and Medicaid Services (CMS) developed guidance on what policies states should put in place to ensure Members are provided with appropriate care. The Department of Medical Assistance Services (DMAS) has a plan in place, that was approved by CMS and scheduled to start March 1, 2024, that includes policies such as:

1. Family caregivers can be paid in extraordinary circumstances, including when no other providers are available
2. A second parent or other legally responsible adult can not be the Employer of Record, which is an individual responsible for ensuring services are provided
3. The Employer of Record must live within 50 miles of the member, to enable sufficient oversight of services
4. Family caregivers can be paid for up to 40 hours of personal care each week
5. Families with a paid family caregiver are not eligible for respite services, which is defined as a service for unpaid caregivers

The General Assembly is currently proposing several changes to these policies. Due to this uncertainty and the challenges it would cause families to have one set of rules implemented and then have those changed, DMAS has requested and received approval from CMS to take the extraordinary step of extending the implementation date of these changes pending any potential General Assembly action. However, because DMAS needs both federal and state authority for this extension, DMAS can only extend the implementation date of provisions that will not result in increased spending. This is because DMAS does not have budgetary authority to unilaterally increase spending.

As a result, the provisions establishing a 40-hour limit on paid personal care and prohibiting respite services will go into effect on March 1, 2024. All other provisions will be delayed until approval is received from CMS for any necessary modifications that come from the General Assembly.