REPORT OF THE DEPARTMENT
OF MEDICAL ASSISTANCE SERVICES

MEDICAID-FUNDED CONSUMER-DIRECTED PERSONAL ASSISTANCE SERVICES

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 22

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COMMONWEALTH *of* VIRGINIA

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TO: The Honorable George Allen

and

The General Assembly of Virginia

This report contained herein is pursuant to House Joint Resolution 125, passed to by the 1996 General Assembly.

This report constitutes the response of the Department of Medical Assistance Services to this resolution and proposes a model for Medicaid-funded consumer-directed personal assistance services. This model will be offered in conjunction with the agency-directed personal care assistance model currently available to Virginians who are elderly or have disabilities. It will allow consumers to hire their own personal attendant after demonstrating their ability to manage and supervise the performance of that attendant.

Respectfully submitted,

Joseph M. Teefey,
Director, Department of Medical Assistance Services

Preface

The 1996 General Assembly passed House Joint Resolution 125, which requested the Department of Medical Assistance Services to "examine existing and available waivers or other options to provide personal assistance services through a consumer-based model of service delivery." The resolution further directed the Department of Medical Assistance Services to "with all due haste, request a waiver or a waiver amendment from the federal government and implement with all due haste consumer-directed personal assistance services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities." HJR 125 was a result of House Document 18 (1996), the "Study of Consumer-Directed Services," which addressed the feasibility and advisability of amending the existing Elderly and Disabled Waiver to allow individuals to hire, train, supervise, and, if necessary, fire their own personal attendants.

The Department of Medical Assistance Services has developed a proposed model for Medicaid-funded consumer-directed personal assistance services. This new service will be provided in conjunction with the agency-directed model currently available to eligible individuals in the Elderly and Disabled Waiver. Consumers will be eligible to receive personal assistance services under either waiver, except in the consumer-directed model, the consumer will be allowed to hire their own personal attendant after demonstrating their ability to manage and supervise the performance of the attendant. In order to meet the mandate of the 1996 General Assembly, DMAS is requesting language in the 1997 General Assembly session to provide the agency with the authority to promulgate emergency regulations. If this language is approved by the General Assembly, the program can be implemented effective July 1, 1997.

We wish to extend our appreciation again to the members of the original workgroup that produced House Document 18 (1996), the "Study of Consumer-Directed Services." In addition, we wish to acknowledge the time and efforts of Michael J. Cooper, Executive Director of the Endependence Center of Northern Virginia, who worked with the other Centers for Independent Living to provide input and resolution of the outstanding issues. We would like to recognize the Department of Rehabilitative Services and the Department of Social Services for their continued contributions to this report.

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Executive Summary

A heightened interest in consumer-directed personal assistance services by consumers with disabilities and providers prompted legislators to investigate the possibilities of providing consumer-directed services in Virginia. Consumer-directed personal assistance services is based upon the principle that individuals should have the primary responsibility for making decisions regarding the assistance they receive. Personal assistance service provide the elderly or disabled consumer with assistance with basic health-related services, such as helping with activities of daily living (eating, bathing, grooming, dressing, ambulation, and toileting); reporting changes in the recipient's conditions and needs; assisting with normally self-administered medications; and/or providing household services essential to health in the home. These services do not include the performance of skilled nursing services.

In 1995, the General Assembly passed House Joint Resolution 539, which requested the evaluation of the feasibility and advisability of amending the existing Elderly and Disabled waiver to allow individuals to hire their own personal attendants. For the purposes of the study, a workgroup, representing the major stakeholders, was convened to evaluate the impact of offering a consumer-directed model of personal care on consumers, providers and other agencies in the community. The results of the workgroup were reported in House Document 18 (1996), entitled "A Study of Consumer-Directed Services."

Based upon the recommendations of this study, the 1996 General Assembly passed House Joint Resolution 125, which requested the Department of Medical Assistance Services to "examine existing and available waivers or other options to provide personal assistance services through a consumer-based model of service delivery." The resolution further directed the Department of Medical Assistance Services to "with all due haste, request a waiver or a waiver amendment from the federal government and implement with all due haste consumer-directed personal assistance services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities."

In accordance with the resolution, the Department of Medical Assistance Services reviewed the "Study of Consumer-Directed Services" (House Document 18, 1996) and other state consumer-based models and waivers (Pennsylvania, Maine and Massachusetts). The Department of Medical Assistance Services also continued to meet with the Centers for Independent Living and the Department of Rehabilitative Services to identify ways to overcome concerns previously identified in the "Study of Consumer-Directed Services." These issues include quality assurance, reimbursement issues, utilization control, employment tax and benefit liability issues and the impact on the long-term care system.

In order to meet the mandate of the 1996 General Assembly to implement a consumer-directed alternative to the agency-directed model of personal care services already in place, DMAS is requesting language in the budget during the 1997 General Assembly session to provide the agency with the authority to promulgate emergency regulations. If this language is

approved by the General Assembly, the consumer-directed personal assistance services program can be implemented effective July 1, 1997. Without the authority to promulgate emergency regulations, DMAS must promulgate regulations via the full regulatory process prior to implementing the program. The full regulatory process takes an average of 14 months to complete. Emergency regulations will shorten the process by at least six months. HCFA waiver guidelines require that the State's regulatory process be complete prior to the final approval of the Waiver. Therefore, DMAS' waiver submission will coincide with the regulatory process.

The Department of Medical Assistance Services has developed a proposed model for Medicaid-funded consumer-directed personal assistance services. This new service will be provided as a separate waiver but in conjunction with the agency-directed model currently available to eligible individuals in the Elderly and Disabled Waiver. Consumers will be eligible to receive personal assistance services under either waiver, except in the consumer-directed model, the consumer will be allowed to hire their own personal attendant after demonstrating their ability to manage and supervise the performance of the attendant.

Both the agency-directed and the consumer-directed personal assistance models are designed to be cost-effective alternatives to institutionalization. Thereby, both models save the Commonwealth money in the provision of long-term care services. The purpose of the consumer-directed waiver will be to offer another cost-effective community-based alternative to the consumer at risk of institutionalization, not to demonstrate that one model is more cost effective than the other.

Comments Received from the Stakeholders on a Draft of this Report

The Department of Medical Assistance Services recently circulated a draft of this report to the stakeholders involved in the provision of personal assistance services to the elderly and consumers with disabilities to solicit comments on the proposed model for consumer-directed personal assistance services. The comments received indicated that there are still issues that require resolution as DMAS develops the regulations and waiver application. Those involved with the frail elderly are concerned that the proposed model is too open for abuse and puts the elderly consumer at risk. Those involved with the consumers with disabilities are concerned that the proposed model is still too restrictive and does not really afford the consumer the autonomy and independence to oversee the assistance needed. A summary of the major issues that still are a concern to the various stakeholders are described in the following chart.

Table 1: Comments Received From Stakeholders On A Draft Of this Report

Issue	Comments Received from Personal Care Agency/Aging Community	Comments Received from the Disability Community
Personal Care Aide/Attendant Standards and Qualifications	Personal care attendants should be required to have skilled (medical or geriatric) training in order to provide personal care services.	Personal care attendants need only minimum requirements to perform personal care services.
Development and Monitoring of Plan of Care	There is a need to provide more oversight to ensure the recipient is receiving the care needed and to ensure the attendant is fulfilling his/her duties in the best interest of the recipient. Current oversight measures under the proposed program will leave the frail elderly at risk for abuse, neglect, or financial exploitation. Assessments should be done every six months, with quarterly visits conducted by registered nurses. The development of the plan of care and the oversight provided should be supervised by a registered nurse, not a social worker or case manager.	There is too much oversight in the proposed program. People with disabilities and their personal care attendants should be allowed to develop their own plan of care and oversee it without the supervision of a nurse, social worker, or case manager.
Clinical Supervision of Recipient Medical Needs	Nursing supervision is important to provide for recipients because registered nurses can monitor the recipients' medical needs and supervise attendants to ensure they are performing their responsibilities in a safe and correct manner.	People with disabilities are already well aware of their own medical needs, and do not require the supervision of a registered nurse.
Program Eligibility	The cognitive criteria required to determine if a person is mentally capable of hiring, supervising, and firing an attendant is not sufficient. The frail elderly may be judged to be competent by the criteria used, but they may still have a judgment impairment which could leave them open to abuse, neglect, or financial exploitation. Due to the risk for abuse, neglect, or financial exploitation, exclude the elderly (persons 60 and older) from this program.	This program should not exempt people with some cognitive impairments.
Reimbursement	It is unfair to the certified nursing assistants (CNA's) to provide the untrained personal care attendant with the same reimbursement rate.	Reimbursement rates should be the same for CNA's and untrained personal care attendants. If not, rates will not be competitive enough to attract reliable people.

Table 1: Comments Received From Stakeholders On A Draft Of this Report (con't.)

Issue	Comments Received from Personal Care Agency/Aging Community	Comments Received from the Disability Community
Providers	The requirements for agencies providing consumer-directed personal care services should be the same as requirements for providers providing the full range of personal care services. Provider agencies will be required to assume most of the responsibilities related to the personal attendant with relatively little oversight.	Change the provider requirements to have different standards for agencies that do not intend to provide the full range of personal care services.
Liability	Concerned where personal liability stands when the agency has little oversight over attendant. The personal care attendant, for tax purposes, is considered to be the agency's employee. The agency has no control in terms of hiring, training, supervising, or firing the attendant, yet it may still be held liable in case of lawsuit or personal injury to the attendant or recipient.	Personal care attendant should be considered an independent contractor for employment purposes. As an independent contractor, liability falls upon personal care attendant.
Implementation of Project	For minimum risk to the Commonwealth and recipients, implement a pilot program for disabled recipients between the ages of 18 and 59.	Implement the program under the waiver state-wide to all eligible recipients regardless of age

Summary Comparison of the Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver

The proposed model represents our best thinking to date on the issues and the program features of the consumer-directed personal assistance model. We have reviewed numerous approaches to the provision of consumer-directed personal assistance programs and have attempted to draw on the best aspects of all of those approaches, while avoiding some of the pitfalls of the past. We present this document now, not because we believe we have resolved all of these issues or because we are firmly committed to every feature. To the contrary, we present this document in the hope that we can continue to solicit the thoughts of all those with a stake in the future of consumer-directed services.

DMAS has had a successful personal assistance services program under the Elderly and Disabled Waiver program since 1982. Many features of this agency-directed model have been retained in the proposed consumer-directed personal assistance services waiver. This similarity will allow the consumers flexibility to choose which program suits their needs and to easily switch programs if desired. However, in order to recognize the principles of consumer-directed services which increase the consumer choice and ability to manage the services they receive, some aspects of the program are different from the agency-directed program. These similarities and differences are summarized in the following chart.

Table 2: Summary Comparison Of The Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver

Program Features	Elderly And Disabled Waiver: Personal Care Services (Agency-Directed Model)	Proposed Consumer-Directed Personal Assistance Services Waiver
Covered Services	Reimbursement for services of personal care aides who assist with the recipient's activities of daily living such as bathing, dressing, transferring, ambulation, and meal preparation. Aides do not perform skilled nursing services.	Same. In addition, attendants also provide supportive services which substitute for the absence, loss, or diminution, or impairment of a physical or cognitive function.
Providers	Personal Care agencies that are approved by DMAS.	Same. In addition, Centers for Independent Living may also enroll as providers. DMAS will establish different provider standards for organizations that do not intend to offer the full range of personal care services.
Personal Care Aide/Attendant Standards and Qualifications	Must be registered as a certified nurse aide, or graduate from an approved education curriculum, or receive pre-approved DMAS training from the provider agency. Other requirements include: documentation of a positive work history, a copy of the required certification, and at least two reference checks. Attendants may not be a member of the consumer's family, have legal guardianship, or is committee for the consumer.	Must be 18 years of age or older; have required skills to perform personal assistance services specified in the consumer's plan of care; possess basic math, reading, and writing skills; possess a valid social security number; and be willing to submit to a criminal records check. Attendants may not be a member of the consumer's family, have legal guardianship, or is committee for the consumer.
Personal Care Aide/Attendant Hiring/Firing	Provider agency responsible.	Consumer responsible.
Personal Care Aide/Attendant Training	Provider agency responsible.	Negotiated between the consumer and the provider agency.
Personal Care Aide/Attendant Supervision	Provider agency responsible; supervision provided by a nurse; supervisor makes a home visit once a month.	Consumer responsible to the extent specified in the consumer's plan of care. However, a service coordinator from the provider agency must be available for problem solving and will make, at a minimum, quarterly home visits. Service coordinators may be a nurse, social worker, or a case manager.
Attendant Payment	Provider agency pays the aide directly.	Provider agency serves as a fiscal agent. Provider agency will issue checks in the attendant's name but give the check to the consumer to pay the attendant or will pay the attendant directly on behalf of the consumer.

Table 2: Summary Comparison Of The Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver (con't.)

Program Features	Elderly And Disabled Waiver: Personal Care Services (Agency-Directed Model)	Proposed Consumer-Directed Personal Assistance Services Waiver
Financial Eligibility for Consumers	Income level is 300% of the current Supplemental Security Income payment standard for one person or medically needy income limit (spend down). Co-payment responsibilities.	Same.
Program Eligibility	1) Meet nursing or pre-nursing facility criteria; 2) Be 65 years and older or disabled and 3) Are determined to be at risk of nursing home placement if waiver services were not available.	Same. Additional criteria include: If disabled, must be 18 years of age and older; no cognitive impairment (no surrogate decision maker); and ability to communicate sufficiently to hire, train and provide instructions.
Assessment and Authorization of Services	Completed by Nursing Home Pre-Admission Screening Teams. The Uniform Assessment Instrument (UAI) is used to establish whether the program criteria is met.	Same. Supplemental questions may be added to the UAI to provide information on the consumer's ability to independently manage his or her care. Consumer directed services will only be offered to consumers that can demonstrate that life and health safety needs will be met.
Development and monitoring of the Plan of Care	Completed by the provider agency and the consumer, based upon needs identified on the UAI and the initial plan developed by the Pre-admission Screening Teams. Plan of care monitored monthly by a nurse supervisor.	The provider agency, through the use of a service coordinator, and the consumer must negotiate a plan of care based upon needs identified on the UAI and the initial plan developed by the Pre-admission Screening Teams. The plan of care must clearly state the responsibilities of all involved parties. Service coordinator will perform, at a minimum, quarterly on-site reviews and will authorize any changes to the plan of care.
Quality of Services	Components of state responsibilities include the assessment of needs and service planning process; freedom of choice and informed consent of the consumer; standards for providers; supportive services; and periodic oversight.	Same. In addition, consumer must also ensure the quality of the service received and know what steps to take if there are problems.
Utilization Review and Control Activities	Agency employs a nurse supervisor to visit the home every 30 days; reassessment is completed every six months; and DMAS will also perform periodic agency office and home visits.	Agency employs a service coordinator who will make quarterly visits to the home and complete a reassessment every six months. DMAS will perform periodic agency office and home visits.

Table 2: Summary Comparison Of The Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver (con't.)

Program Features	Elderly And Disabled Waiver: Personal Care Services (Agency-Directed Model)	Proposed Consumer-Directed Personal Assistance Services Waiver
Reimbursement	$9.50 per hour of service ($11.50 per hour for providers in Northern Virginia). Aides receive between $5 and $7 per hour.	Reimbursement rates will be developed to ensure equity in payment to the personal care aides and to recognize the administrative costs associated with this model. DMAS will evaluate the feasibility of establishing a reimbursement rate which more accurately reflects the administrative costs through the separation of the administrative functions and service provision.

Introduction

A heightened interest in consumer-directed personal assistance services by consumers and providers prompted legislators to investigate the possibilities of providing consumer-directed services in Virginia. In 1995, the General Assembly passed House Joint Resolution 539, which requested the evaluation of the feasibility and advisability of amending the existing Elderly and Disabled waiver to allow individuals to hire their own personal attendants. For the purposes of the study, a workgroup, representing the major stakeholders, was convened to evaluate the impact of offering a consumer-directed model of personal care on consumers, providers and other agencies in the community. The results of the workgroup were reported in House Document 18 (1996), entitled "A Study of Consumer-Directed Services." In this report, the workgroup developed a set of recommendations for a Medicaid funded consumer-directed model. The recommendations formed by the group addressed the feasibility and advisability of offering a consumer-directed service. Some recommendations include:

- Virginia should offer a consumer-directed model of service to elderly and disabled persons age 18 and over, who have no cognitive impairment and are able to communicate sufficiently to hire, train and provide instruction regarding their needs to attendant staff;

- The consumer-directed model of service should be offered in conjunction with the agency-directed service model already in place;

- The Medicaid Program should use agencies (e.g., providers of home health personal care, centers for independent living, etc.) to serve as fiscal agents for the consumer-directed service. The IRS recognizes the fiscal agent as an appropriate intermediary for purposes of income tax reporting, payment of social security (FICA taxes), federal and state unemployment taxes;

- The consumer-directed program should include training for the consumer that assures that the consumer understands how to manage his or her service. The ideal source for this training is other consumers;

- The requirements for attendants in the consumer-directed model should be: an ability to read and write, a minimum age of 18 years of age, and willingness to submit to a criminal record check. Although there would be no formal training or education requirements, every attendant should be provided information to assure appropriate introduction to the philosophy of consumer-directed service; and

- The fiscal agent should be required to employ or contract with a service coordinator who is responsible for completing periodic reassessments and for authorizing the initial service plan and any subsequent changes in the consumer service plan.

The study also discussed concerns and considerations to be addressed in future studies. These include the impact on the long-term care system, quality assurance issues, utilization control issues, reimbursement issues and employment tax and benefit liability issues.

Based upon the recommendations of the study, the 1996 General Assembly passed House Joint Resolution 125, which requested the Department of Medical Assistance Services to "examine existing and available waivers or other options to provide personal assistance services through a consumer-based model of service delivery." The resolution further directed the Department to "with all due haste, request a waiver or a waiver amendment from the federal government and implement with all due haste consumer consumer-directed personal assistance services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities." The resolution is strongly supported by the Governor's Principles for Disability Service guidelines, which are committed to continually developing and implementing community-based and customer-driven services designed to foster independence, as well as assisting people with disabilities in the opportunities to achieve the skills or technologies they need to remain or become independent.

In accordance with the resolution, the Department of Medical Assistance Services reviewed the "Study of Consumer-Directed Services" (House Document 18, 1996) and other state consumer-based models and waivers (Pennsylvania, Maine and Massachusetts). The Department of Medical Assistance Services also continued to meet with the Centers for Independent Living and the Department of Rehabilitative Services to identify ways to overcome concerns previously identified in the "Study of Consumer-Directed Services."

The Department of Medical Assistance Services has developed a proposed model for Medicaid-funded consumer-directed personal assistance services. This new service will be provided as a separate waiver but in conjunction with the agency-directed model currently available to eligible individuals in the Elderly and Disabled Waiver. Consumers will be eligible to receive personal assistance services under either waiver, except in the consumer-directed model, the consumer will be allowed to hire their own personal attendant after demonstrating their ability to manage and supervise the performance of the attendant.

In order to meet the mandate of the 1996 General Assembly to implement a consumer-directed alternative to the agency-directed model of personal care services already in place, DMAS is requesting language in the budget during the 1997 General Assembly session to provide the agency with the authority to promulgate emergency regulations. If this language is approved by the General Assembly, the consumer-directed personal assistance services program can be implemented effective July 1, 1997. Without the authority to promulgate emergency regulations, DMAS must promulgate regulations via the full regulatory process prior to implementing the program. The full regulatory process takes an average of 14 months to complete. Emergency regulations will shorten the process by at least six months. HCFA waiver guidelines require that the State's regulatory process be complete prior to the final approval of the waiver. Therefore DMAS' waiver submission will coincide with the regulatory process.

Personal Assistance Services: Agency-Directed and Consumer-Directed Models

Personal assistance services are defined as long-term maintenance or support services which are necessary to enable the individual to remain at or return home rather than enter a nursing facility or hospital for a specified condition. Personal assistance services provide eligible individuals with personal care attendants who perform basic health-related services, such a helping with activities of daily living (eating, bathing, grooming, dressing, ambulation, and toileting); reporting changes in the recipient's conditions and needs; assisting with normally self-administered medications; and/or providing household services essential to health in the home. These services do not include the performance of skilled nursing services.

The Department of Medical Assistance Services (DMAS) provides reimbursement for personal care services through home and community-based waivers. Virginia currently has five home-and community-based waivers, with all five waivers including personal care or personal assistance services that can be offered to avoid or prevent more costly institutionalization. The Elderly and Disabled waiver includes three services (Respite Care, Personal Care and Adult Day Health Care). One or more of these services may be authorized for elderly persons and persons with disabilities when a nursing home pre-admission screening team determines that the person would otherwise require nursing facility care. In fiscal year 1995, DMAS spent approximately $ 61.5 million on Personal Care services for approximately 9,000 Elderly and Disabled waiver consumers.

The Elderly and Disabled waiver consumer is currently only able to receive his or her personal care from an approved care agency contracted through DMAS, which contracts with approximately 160 agencies. The agency chosen by the consumer assumes responsibility for recruiting and hiring trained assistants, assigning assistants to waiver consumers based on the agency's staffing capability, supervising those assistants and overseeing the consumer's service on an ongoing basis. This model of service is termed an agency-directed model of service.

Under the principles of an agency-directed model, the personal care agency utilizes a medical approach of care wherein the consumer is assessed based on his level of disability and degree of dependence. Once a level of care is determined, a case manager involves the consumer in the process of developing a plan of service based on the consumer's needs and in determining the activities the agency will instruct the personal attendant to perform. The agency-directed model also controls the structure of the service delivery system by assuming primary responsibility for certifying, training, selecting, scheduling, and terminating the personal attendant. The consumer may have some choice in the aide assigned to provide service, but is largely dependent upon who the agency has available at the time. The consumer may have some choice regarding the hours that service is rendered, but the attendant's schedule is often set amidst the competing demands of the agency's other clients. Agency-directed program design and regulations may also limit the number of tasks the attendant can perform and where the tasks are performed.

Consumers have voiced numerous concerns regarding the nature of agency-directed services. For example, the Virginia Department of Rehabilitative Services receives complaints which are primarily related to the provision and regulation of services, and the lack of control consumers feel they have in this process. Some concerns include inflexibility with scheduling requirements, insufficient hours of service, the attendant's inability to perform tasks outside of the consumer's home, and the lack of autonomy a consumer has to hire, train, and direct the personal attendant. Generally, consumers who receive agency-directed services also experience a higher rate of turnover in attendants than that reported by persons in the disabilities community who have traditionally hired and supervised their own attendants. A consumer-directed model is one approach for increasing the flexibility and service delivery while also meeting the desires of the consumer.

Unlike the agency-directed model, a consumer-directed model of service is based on the principle that individuals should have the primary responsibility for making decisions regarding the assistance they receive. This, according to a 1996 study of consumer-directed personal assistance services models, maximizes the independence and autonomy of persons who need functional assistance from others. Under the consumer-directed model, a consumer recruits, hires, trains, manages and directs his or her own provider of services, known as a personal attendant. The consumer is directly responsible for: 1) Determining what activities the attendant performs on a daily basis; 2) Negotiating what times the attendant arrives and departs; 3) Having a back-up plan in place for those times when the attendant cannot provide the needed service; 4) Generating any paperwork necessary to assure accountability of public funds; and 5) Notifying appropriate persons when needs change. The personal attendant is accountable to the consumer rather than to a supervisor of a provider agency, and follows the consumer's directions as to how to meet his or her needs. Persons that receive consumer-directed services also report greater flexibility on the part of the person providing service to work early mornings or late nights and weekend hours than is experienced by agency-directed consumers.

There is wide variability in the elderly and disabled population's ability and potential desire to self-manage personal care services. It must be noted the consumer-directed model is only appropriate for those consumers who have no cognitive impairment and who can communicate adequately to supervise and train their own attendant. For example, approximately 31% of the elderly population in the Elderly and Disabled waiver receiving personal care have some type of cognitive impairment that would preclude consumer-directed services. Of the non-elderly population with disabilities receiving personal care, approximately 27% have some type of cognitive impairment that would preclude consumer-directed services.

Virginia State Agency Experience With Consumer-Directed Services

Although experience with consumer-directed models is still relatively new, Virginia already has an infrastructure that recognizes the need for consumer-directed personal assistant services. Eligible consumers can access such services through the Personal Assistance Services (PAS) Program operated by the Department of Rehabilitative Services or through the Department of Social Services, which reimburses providers of companion, homemaker and chore services to a primarily elderly population.

Department of Rehabilitative Services' Personal Assistance Services (PAS) Program

The Personal Assistance Services (PAS) Program began as a pilot project under the Department of Rehabilitative Services (DRS) in September 1990, using a federal developmental disabilities grant and state general funds totaling $268,000. The program budget for FY 1997 is $1,262,581 in state general funds. A projected $500,000 in vocational funds, which are federally reimbursed at 80%, will be used to provide personal assistance to individuals participating in educational and job training programs.

Consumers who express interest in the PAS Program must be able to demonstrate they are capable of managing their own care needs, directing others in providing their care, managing their own affairs and have no cognitive disability that impairs their ability to direct their assistants. Services include, but are not limited to, personal care needs, homemaking needs, shopping or transportation. In this program, the consumer is responsible for hiring, training, and supervising his own attendant. Although there is no age limit for recipients, the average age is 42 years of age. During Fiscal Year 1996, the PAS Program served 199 people on an average of 28-30 hours per week of attendant care services. The program budget was $1,087,581 in state general funds and an additional $214,946 in federal vocational funds.

The extent of services required is determined by an assessment process that utilizes the Uniform Assessment Instrument in additional to supplemental questions that are used to determine the amount of time required to assist with daily living activities. The assessment also includes an evaluation of the consumer's home to determine whether environmental barriers, such as inaccessible bathrooms or appliances, are contributing to the need for help with daily activities. DRS contracts for eligibility assessments at $300 for initial assessment and $100 for annual reassessments through Centers for Independent Living. Eligibility is based on a variety of factors, including degree of functional limitations, ineligibility for services from other programs, the ability to manage personal affairs, and financial criteria. Consumers who are determined to be eligible for the PAS Program have the option to receive training in the direction and management of personal assistance by CILs staff. Unlike a

Medicaid waiver program, consumers do not have to be at risk of nursing home placement although approximately 45% of the recipients have met the nursing home admission criteria at some point. There is a waiting list to receive services, although high priority is given those in nursing homes who could return to the community with adequate help, as well as those at risk of entering a nursing home. Other priority categories include consumers who require personal assistance to get or keep a job and applicants whose lack of assistance is creating acute medical problems.

PAS personal attendants must meet legal age requirements (16 years of age) and not be an immediate family member of the recipient. Immediate family is defined as a spouse, child, parent, or sibling living in the same home. There are no educational or prior training requirements for providers, and recipients train providers in their own care needs. Recruitment and orientation of providers may be offered through a CIL according to demand. Once eligibility and the number of hours required by the recipient is determined by DRS, the recipient develops a contract, or plan of care, with the personal assistant. A copy of the contract is forwarded to DRS. Some recipients may have more than one personal attendant and their overall allotment of time is divided among all attendants. Personal attendants are paid at rate of $8.00 an hour for the Northern Virginia area and $5.50 an hour for all other parts of the State.

DRS receives bi-weekly timesheets signed by the personal attendant and consumer, which document the hours of service provided. Once DRS staff determine the consumer is entitled to the number of hours claimed, a check is issued directly to the personal assistant. DRS is regarded as a fiscal agent for consumers of the PAS Program. This arrangement recognizes the consumer as employer and DRS completes certain tax functions on behalf of the consumer. FICA (Social Security and Medicare taxes) is withheld from the assistants' checks and DRS pays the employer's share of FICA as well as state and federal unemployment taxes. DRS contracts out the payroll functions of the program to a private bookkeeping company that calculates the amount of taxes to be withheld for each recipient, writes and mails checks to the assistants, files and pays taxes quarterly or as required, provides customer service to the assistants regarding lost stolen or inaccurate checks, processes garnishments and issues W-2 forms at the end of the tax year.

At the present time, some of the 210 clients currently enrolled in the PAS program are also receiving personal care services under the Medicaid Elderly and Disabled waiver program. Therefore, it is likely that these clients would switch from the Medicaid-funded Elderly and Disabled Waiver program to the Medicaid-funded consumer-directed personal assistance program.

Department of Social Services' Companion Program

The Department of Social Services (DSS) offers companion, homemaker and chore services to the elderly and persons with disabilities. These home-based services are arranged to provide protection from abuse, neglect, and exploitation, prevent inappropriate institutionalization, and assist adults who are trying to attain or retain self care. Generally, the DSS services are structured to allow greater consumer participation than the current DMAS personal care programs (to be further addressed later in this study.) The extent of consumer direction and control, however, varies according to each DSS locality. The program began 25 years ago and currently serves 6,600 adults with an annual $13.6 million dollar budget. Funds to pay for services come from federal, state, and local dollars.

Of all three services provided by DSS, the companion services program is most similar to the PAS program. In fiscal year 1996, the companion services program assisted approximately 5,493 elderly and persons with disabilities in their homes with daily living skills, such as toileting, dressing, eating, transferring, bathing, and food preparation. Eligibility for services is based upon a comprehensive assessment (the UAI) conducted by the caseworker in the local agency.

Caseworkers are generally social workers who must have a degree in social work, or a related field, or a number of years of combined experience. The adult, if not cognitively competent to manage his or her own financial and personal affairs, may have a surrogate to represent him or her. Once the initial assessment is complete and the hours of service are authorized, the local DSS caseworker together with the adult locates a companion provider. The caseworker then develops a Purchase of Service agreement with the adult and provider. The caseworker also performs quarterly reassessments and ongoing annual assessments, and requires monthly timesheets signed by the adult, provider and casework supervisor. Approximately 20 percent of companion service recipients are under 60 years of age, with the remaining 80 percent being 60 years of age and older.

A person can qualify to become a provider for the companion services program if he or she meets minimum age requirements, obtains a statement from a physician or clinic that he or she does not have tuberculosis in a communicable form, and submits two references. The provider must also be willing to identify any criminal record and agree to submit to a criminal record check. The adults or family members may suggest an appropriate provider. The provider may be a friend or a family member if written documentation is supplied to demonstrate he or she is available and qualified to provide the best plan of care for the adult. Providers are not required to have any previous training because they may receive training from the local agency.

The state agency allocates funding, provides training and technical assistance, and monitors the local departments of social services, which are the fiscal agents acting on behalf

of the adult. As such, the local DSS is responsible for the collection and payment of Social Security taxes (FICA) and the payment of unemployment taxes. The local department of social services may contract with a vendor agency or develop its own capability to perform the fiscal agent functions. The provider receives payment once the timesheets are approved for the allotted time. Provider hourly wages are determined by each locality, but must be no lower than minimum wage ($4.75 an hour effective 10/01/96).

Both the PAS Program and the Companion Services Program are examples of programs that utilize both agency-directed and consumer-directed models of service. Although similar in the degree and scope of services, the PAS program and the DSS companion services program demonstrate varying levels of control for the consumer. The PAS program tends to offer more flexibility to consumers regarding their choice of services. For example, the PAS program provides the consumer with the option for provider training and supervision, whereas the DSS companion service program controls the training provided and requires quarterly reassessments. Also in the companion services program, the local caseworker develops the plan of care with input from the consumer. The companion services program, however, must follow guidelines established by state and federal regulations to provide quality assurance and utilization control.

Department of Medical Assistance Services' Agency-Directed Waiver Programs That Offer Personal Care Services

Elderly and Disabled Waiver Services

The Elderly and Disabled Waiver became effective in 1982 as a home-and community-based care waiver under §1915(c) of the Social Security Act. Three alternative service programs are provided under this waiver to elderly and disabled individuals who are eligible for institutional placement under the Medicaid Program:

- **Personal Care**: Reimbursement for services of Personal Care Aides who assist with the recipient's activities of daily living such as bathing, dressing, transferring, ambulation and meal preparation. Exclusions include transportation and skilled services.

- **Adult Day Health Care**: Reimbursement for services offered to recipients in a congregate daytime setting where a group of professionals and aides provide personal care, socialization, nursing, rehabilitation and transportation services.

- **Respite Care**: Reimbursement for aides or LPN's who perform personal care activities. This service differs from Personal care in that the focus is on the need of the regular caregiver for a break rather than the need of a recipient for continuous care. Services are limited to 30 days or 720 hours per 12-month period.

To receive any of these services, consumers must meet the waiver's target population which includes those individuals who (1) meet the nursing facility level of care criteria (i.e. are functionally dependent and require medical and nursing supervision of care) or pre-nursing facility criteria which does not include the medical and nursing need, and (2) are determined to be at risk of nursing facility placement and for whom community-based care services under the waiver are the critical services that enable the individual to remain at home rather than being placed in a nursing facility. Community-based care services under the waiver cannot be offered to individuals unless it can reasonably be expected that the individual would, without these services, enter a nursing facility. Provision of this waiver service must be determined by a Pre-admission Screening Team or a DMAS utilization review team to be a medically appropriate cost-effective alternative to institutionalized care. Designated assessment and authorization forms include the UAI and the Long-Term Care Authorization form (DMAS-96).

Registered nurses with Virginia licensure are hired to provide supervision of the personal care attendant and oversee the consumer's needs and fulfillment of the criteria for the waiver. The registered nurse makes supervisory visits as often as needed (at least every 30 days) to ensure both quality and appropriateness of services. The plan of care is developed by a nurse supervisor and submitted to DMAS for approval; reevaluations are conducted every six months. The ratio of registered nurses to attendant staff is one full-time RN to forty attendants or one full time RN to thirty-five consumers.

Persons who are personal care attendants under the waiver must: 1) be registered as a Certified Nurse Aide; or 2) graduate from an approved education curriculum such as Nursing Assistant, Geriatric Assistant, or Home Health Aide; or 3) receive pre-approved DMAS curriculum training from the provider agency. Other requirements include documentation of a positive work history, a copy of the attendant's certification, and at least two reference checks. Personal care attendants may not be a member of the consumer's family, have legal guardianship, or be committee for the consumer.

Personal care agencies are also responsible for billing DMAS for services rendered by the personal care attendant. DMAS is billed on a calendar-month basis according to the number of hours approved in the plan of care and the number of hours actually delivered according to the attendant log sheets, which are signed and dated by the attendant and the consumer/or family member. The rate of pay for the provider agency is $11.50 an hour for Northern Virginia, and $9.50 an hour for the rest of the state.

AIDS Waiver Services

Four alternative service programs are provided under this waiver to individuals with AIDS, or who are HIV+ and symptomatic, who are at risk of institutionalization. To receive such services, an individual must be at risk of hospital or nursing home care and the provision of home-and community-based care must be determined by a PAS team or a DMAS Utilization Review team to be a medically appropriate, cost-effective alternative to institutional care.

Individuals may not receive services under any other home and community-based waiver while receiving services under this waiver. However, they may receive services solely or in combination under any of the service programs included in the AIDS waiver. Services provided under the waiver include:

- **Private Duty Nursing**: Reimbursement for care provided by a registered nurse or a licensed practical nurse. Exclusion: Amount limited by medical necessity and cost effectiveness.

- **Personal Care:** Reimbursement for services of Personal Care Aides who assist with the recipient's activities of daily living such as bathing, dressing, transferring, ambulation and meal preparation. Exclusion: Transportation, Skilled services.

- **Respite Care:** Reimbursement for care provided by either an RN, LPN, or Aides as respite for regular caregivers for up to 30 days or 720 hours per 12 month period.

- **Case Management:** Reimbursement for monitoring, re-evaluation, revisions to the plan of care and integration of services provided by case managers for approved AIDS waiver recipients. Exclusion: Maximum 10 hours per month.

- **Nutritional Supplements:** Reimbursement for physician-ordered nutritional supplements when the individual requires the nutritional supplement as the primary source of nutrition and is not able to purchase these food supplements through other available means.

Personal care services, like other services offered, became effective in January 1991. Under the AIDS Waiver, reimbursement is made for services of personal care attendants who assist with the recipient's activities of daily living. Skilled services requiring professional skill or invasive therapies are provided under private duty nursing services.

Like the Elderly and Disabled Waiver, individuals who may qualify for personal care services are assessed with a comprehensive assessment by a Pre-Admission Screening Team, AIDS Service Organization, or a DMAS Utilization Review Team. Personal care agencies are also contracted to supervise personal care attendants and the care received by the consumer. Provider agencies also bill on a monthly schedule based on the number of hours of care provided by the attendant. The hourly reimbursement rate differs; Northern Virginia agencies are reimbursed $12.50 an hour, and the rest of the state is reimbursed $10.80 an hour.

Regular Assisted and Intensive Assisted Living Services in Adult Care Residences

Effective August 1996, DMAS offers two levels of payment for assisted living services available to auxiliary grants clients residing in licensed adult care residences: regular assisted living services for those individuals who do not meet the criteria for Medicaid-funded waiver

services but who may have physical or mental impairments, and who require at least a moderate level of assistance with activities of daily living; and intensive assisted living services for those individuals who meet the criteria for waiver services by being at risk for nursing home placement.

DMAS provides an additional per diem payment above the current auxiliary grant rate for residents of adult care residences (ACRs) in regular assisted living (all state general funds, $3.00/day up to a maximum of $90/month) and intensive assisted living (combination of state and federal funds under a federal waiver, $6.00/day up to a maximum of $180/month) to provide coverage for personal assistance with activities of daily living.

Local public human service agencies and other qualified assessors have the responsibility for authorizing the specific level of care in ACRs. The assessments are completed utilizing the Uniform Assessment Instrument (UAI) and uniform program criteria. DMAS completes the final authorization during the admission certification process. Residents receive an assessment at least every 12 months to ensure the continued need for services, and whenever a change in the resident's condition appears to warrant a change in level of care.

Mental Retardation Waiver Services

The Mental Retardation Waiver Program is targeted to provide home-and community-based services to individuals with mental retardation or related conditions and individuals under the age of six years at developmental risk who have been determined to require the level of care provided in an ICF/MR. All clients receiving waiver services must meet the program-specific criteria and be Medicaid-eligible in a medical institution. The resource and income rules are applied to waiver eligible individuals as if the individual were residing in a medical institution. The income limit used for this waiver is 300% of the current SSI payment standard for one person. Medically needy individuals are not eligible for this waiver.

Services provided under this waiver include residential support, personal assistance services, habilitation, respite care, nursing, environmental modification, nursing services, assistive technology, day support, supported employment, and therapeutic consultation. All individuals receiving Mental Retardation Waiver services must also receive case management services.

The consumer's need for services provided under this waiver is determined by the Community Mental Health Services Board (CSB) or the Department of Rehabilitative Services (DRS) case manager after completion of a comprehensive assessment. All recommendations are submitted to the Department of Mental Health, Mental Retardation and Substance Abuse Services or DMAS staff for final authorization.

Community Service Boards or private agencies not affiliated with Community Services Boards often contract as provider agencies. The provider agencies perform fiscal and service

provision functions under the contract. In terms of fiscal reimbursement, DMAS contracts with each provider to bill DMAS monthly for services rendered. For example, the personal care reimbursement for Northern Virginia is $11.00 an hour, with the rest of the state receiving $9.50 an hour; case management reimbursement averages $175.40 per month.

Other States Review: Consumer-Directed Services

Advocates of consumer-directed models of service provision argue that people who are aged and have disabilities should be afforded as much independence and autonomy as possible in decisions about the types, amounts, and sources of the personal care attendant services they receive. At the same time, the use of public funds raises significant questions of accountability for state policymakers. In order to address this issue and explore other issues previously identified, three state programs and waivers were selected and reviewed. The states chosen (Pennsylvania, Maine and Massachusetts) all contained elements of consumer-directed services under varying funding streams and service provisions.

The Pennsylvania Model

Discussions with the United States Health Care Financing Administration (HCFA) indicated that of all states currently offering consumer-directed services, the Commonwealth of Pennsylvania fits most closely with Virginia's current long-term care program structure. In August 1995, Pennsylvania implemented a §1915(c) home-and community-based waiver targeted to physically disabled persons. The Attendant Care Services waiver incorporates three models of service provision that the consumer may choose at his or her discretion. The first model is much like Virginia's existing agency-directed service, where the provider agency is responsible for hiring, supervising and firing personal care attendants; the consumer has some input into the process, but very little direct control. Pennsylvania's other two models (combination and consumer-directed) allow the consumer to hire, supervise and fire their own attendant, with varying amounts of consumer and agency involvement. The combination model allows for consumer choice with agency supervision and assistance, while the other model follows a consumer-directed service approach. Consumers presently receiving personal care under a state-funded program are given the option to voluntarily move into the waiver. If they choose this option, the funding provided for their care under the current state program transfers to the waiver as the state match to federal funds, thereby keeping the program budget neutral without any additional funding costs to the Commonwealth. It is important to note that state-funded models of consumer-driven services, unlike federal waivers, do not require strict eligibility criteria and formal monitoring of the development and implementation of the plan of care.

Services provided through the waiver consist of basic and ancillary functions which enable individuals to live in their own communities and homes and carry out their activities of

daily living. Basic services include, but are not limited to, assistance with mobility, bathing, grooming, eating, and meal preparation. Ancillary services include homemaker services, companion services, and assistance with cognitive tasks associated with financial and activity arrangements. The waiver is expected to serve 347 individuals once consumers finish 'switching' from the state-funded personal care service program to the waiver. The average number of personal care hours provided is approximately 22 hours per week. Although all consumers between 18 and 59 years of age are eligible for this service, the average consumer is 40 years of age.

Consumers who express interest in receiving personal care services must meet the following requirements:

- They are mentally alert and able to manage their own legal and financial affairs and are able to direct their own attendant;
- They are classified as an adult (18 to 59 years of age);
- They are experiencing a physical impairment which requires them to seek assistance to complete functions of daily living, self care, and mobility;
- They meet financial requirements;
- They are cognitively capable of selecting, training, supervising, and firing an attendant; and
- They must exhaust all other third-party benefits or insurance prior to receiving services.

Pennsylvania's Department of Public Welfare currently contracts with 16 provider agencies, including home care agencies such as those contracted currently in Virginia to provide waiver services. The providers (i.e., Centers for Independent Living, local Area Agencies on Aging, private agencies and non-profit agencies) act as fiscal agents to administer a consumer-directed model. The provider agency also provides a service coordinator who assists the consumer, as needed and requested by the consumer, and who performs periodic reassessments (every 12 months) and submits changes in the service plan. Service coordinators are often employed nurses or occupational therapists. The provider agency also offers training for consumers in how to effectively manage their service, as requested by the consumer. Registered nurses employed by or on a consulting basis with Pennsylvania also review a random sample of service plans every year to ensure quality assurance and utilization management.

Personal care attendants must be able to read, write, and perform basic math skills, be legally eligible for employment, be at least 18 years of age, and willing to submit to a criminal records check. There are no formal training or education requirements, and the consumer is given the choice to perform a criminal record check. Depending on the model chosen by the consumer, the consumer may develop his own plan of care with the attendant with or without

supervision. If the consumer desires, the agency can contract services on behalf of the consumer. Bi-weekly timesheets signed by the consumer and attendant are used to document the number of hours worked, which cannot exceed more than 26 hours a week.

The provider agency, acting as the fiscal agent, bills the Medicaid agency for services, makes out a check to the attendant and gives it to the consumer, withholds FICA, etc. and makes quarterly payments to the IRS in all three models. The fiscal agent is considered the attendant's employer for purposes of income tax reporting, FICA taxes and federal unemployment taxes. Thus the consumer and the fiscal agency are both employers, but for different purposes. The rate of pay by the hour is $6.70 for the agency and $5.64 for the consumer. The rate of pay by the half hour is $5.54 for the agency and $4.48 for the consumer.

Pennsylvania does have over 10 years of prior experience with the consumer-driven model of service as a state-only funded program. State representatives report that it has worked very successfully for them, and the current Medicaid waiver is working as well. Approximately 2,500 persons receive consumer-driven services (state-funded and waiver) at an average per capita cost which is similar to Virginia's current expenditure for Personal Care services. Although Pennsylvania fits closely with Virginia's current long-term care and state plans, other state waivers and programs with dimensions of consumer-direction were examined to ensure complete structural overview.

The Massachusetts Model

The state-funded Massachusetts Personal Care Attendant (PCA) program began in the early 1980's as a result of intense lobbying efforts by interested parties for consumer-directed services. The goal of the PCA program is to provide eligible consumers with medically necessary, high quality, cost-effective services to allow them to remain in a community setting. Some services provided in the program include assistance with household services, transportation, dressing, bathing, eating, and assistance with special needs.

The PCA program differs from Medicaid 1915(c) home-and community-based waivers because consumers do not have to be eligible for institutionalization to receive personal attendant services. They do have to be at least 18 years of age, have the ability to manage their own personal and financial affairs, and the ability to hire, train, supervise, and fire attendants. Individuals with cognitive impairments may use a surrogate to represent them. Because of the broad program eligibility criteria, the PCA program currently provides assistance to approximately 4,000 individuals at a cost of $55 million annually.

The Massachusetts Medicaid agency contracts out provider responsibilities to approximately 14 qualified agencies similar to Virginia's Centers for Independent Living. The agencies perform the initial assessments and make the request for services to the Medicaid division, which in turn determines the number of attendant hours. The agencies hire

registered nurses and occupational therapists to assess consumers and perform case management roles by reassessing the consumer's needs once every twelve months. Once the number of attendant hours are approved, the agency and the consumer enter into a contractual agreement and develop a plan for management of PCA services. The consumer then has the main responsibility for hiring, training, supervising, and firing his or her own personal care attendants (PCAs). The case managers also offer supportive services (training, etc.) to the consumer upon request.

Individuals interested in being hired as personal attendants must meet requirements established by the PCA program. Attendants, for instance, can not be of immediate relation to the consumer, and must meet minimum age requirements. Although no prior education or training is required, the PCA must be able to perform tasks outlined in the plan of care. PCAs are trained by the consumer, and if assistance is requested, the provider agency provides training. Under the current system, the consumer hires as many PCAs as he or she needs to fill the allotted hours. The consumer and attendant then develop a plan of care together and establish the number of hours the attendant works. The case manager conducts quarterly monitoring of the consumer's use of PCA services and re-evaluates any change in the consumer's medical condition.

Financial reimbursement proves to be an interesting issue for the existing PCA program. Under the current structure, the consumer pays the PCA for hours worked and turns in a timesheet bi-weekly to the provider agency. The provider agency then submits claims to the Medicaid Division, and upon receipt of payment, reimburses the consumer for payments made to the PCAs. Payment rates are set by the Massachusetts Rate Setting Commission and are currently $8.50 an hour.

Although the PCA program is largely successful, the recent increase in populations served through the program forced the Division of Medical Assistance (DMA) to propose a few changes to the two main PCA provider agency functions: 1) service management and 2) employment and payroll processing. Current provider agencies and other organizations that meet the following criteria could enroll as providers of one or both of the proposed components.

- **Service Management.** In 1988, legislation was passed to allow consumers to use surrogate persons or agencies if they did not have the cognitive or managerial skills to supervise their own attendants. As a result, various individuals and agencies surfaced (acting as surrogates for children, the aging, etc.) and the program's estimated consumer population of 200 individuals dramatically increased. As of 1995, over 4,000 individuals are being served through the program with an annual budget of $55 million. In order to serve the growing population, the newly proposed structure recommends changing existing service management to include screening for clinical eligibility and conducting evaluations and re-evaluations for eligible recipients, referral to alternative services if appropriate, providing orientation of consumers to the program, monitoring service delivery and utilization, and assuring adequate consumer or surrogate supervision of PCAs.

- **Employment and Payroll Processing.** Over the years the DMA assumed that personal care attendants are independent contractors, and are responsible for all relevant taxes. Since taxing authorities are now holding recipients to a tax liability as employers, it was determined that PCAs should be viewed as employees. To avoid consumer hassle with unemployment and tax withholding, suggestions include allowing the PCA agency to become the fiscal agent by employing PCAs, developing PCA timesheets and procedures for assuring consumer or surrogate supervision of time and attendance, timely processing of payment to PCAs, and appropriate tax withholding and reporting on behalf of consumers. The PCA agency would be responsible for reimbursing PCA's on behalf of the consumers.

The proposed changes in the current structure would allow the DMA to better handle the financial and administrative aspects of the PCA program. Advocacy groups concerned with reverting back to an agency-directed model are strongly challenging the proposal. As a result, the protests halted proposed program changes in the immediate future. Discussions are currently being held to bring a consensus among interested parties and state policymakers.

The Maine Model

The Maine §1915(c) Home-and Community-Based Care Waiver for the Physically Disabled is similar to the Massachusetts PCA program, only it is offered as a waiver instead of a state-funded program. The Maine waiver provides personal care services for persons who are eligible for nursing facility care. Consumers eligible for the waiver must have a physical disability, be at least 18 years of age, mentally able to manage their own affairs and finances, and have no cognitive impairments. They must also be able to hire, train, supervise, and fire their own attendants. Unlike the Massachusetts program, consumers are not allowed to have surrogates to represent them. In 1995, the waiver served approximately 250 consumers with a $300,000 annual budget (one-half federal, one-half state match).

Like the Massachusetts and Pennsylvania programs, a qualified agency is contracted by the Department of Medical Assistance (DMA) to be the service provider. Consumers are assessed to meet financial and nursing facility criteria through the contracted agency, and they are reassessed annually. DMA determines the number of hours allotted based upon the assessments. Assessors and case managers are required to be registered nurses or occupational therapists. The agency provides case management services by monitoring timesheets and contacting the consumer once per month to ensure he or she is receiving the necessary services.

Individuals interested in becoming personal attendants cannot be immediate family members of the consumer, and they must be over 16 years of age. Although there are no formal education or training requirements, they are expected to be able to perform the technical skills needed to be a personal care attendant. The number of attendants allotted per

consumer varies according to need. The consumer and the attendant draw up the plan of care together, and the consumer trains the attendant according to his or her needs. Day to day supervision is performed by the consumer, with assistance available from the provider agency upon request.

The Medicaid department contracts with an agency to be the fiscal provider, who makes the payments to the personal care attendant. The provider agency is thus responsible for collecting income taxes, Social Security taxes, and unemployment taxes. Payments are made upon successful review of timesheets to ensure the number of hours do not exceed the allotted time. Timesheets are signed by consumer and attendant and turned in on a bi-weekly basis. State representatives from Maine and Pennsylvania report this type of reimbursement works very well, and Massachusetts is currently working to establish their PCA program under this payment structure.

A review of various state consumer-directed programs and waivers demonstrates the flexibility and versatility states have in developing programs for their constituents. There are many similarities among all of the programs, namely the appointment of agencies to provide services, the eligibility requirements for consumers, and requirements for personal care attendants. The states also had quality assurance and utilization control elements implemented into the program or waiver structure. While Massachusetts is currently working to develop its reimbursement methodology, Maine and Pennsylvania's reimbursement policies and regulations have been met with equal success. Although Massachusetts and Maine offer programs or waivers with elements of consumer-direction, only Pennsylvania offered the consumer the opportunity to choose between a consumer-directed model, a combination model, or an agency-directed model.

The states of Pennsylvania, Massachusetts, and Maine demonstrate examples of successful consumer-directed programs and waivers. Their examples will assist Virginia in the development and implementation of a consumer-driven model of service.

Proposed Medicaid-Funded Consumer-Directed Personal Assistance Services In Virginia

Purpose of the Waiver

The 1996 General Assembly directed DMAS to request a waiver or waiver amendment to implement consumer-directed personal assistant services. The primary purpose of the waiver will be to prevent inappropriate and unnecessary institutionalization by providing cost-effective consumer-directed personal assistance services as an alternative to institutionalization. Consumer-directed personal assistance services will be modeled after the current agency-

directed model, except consumers will be allowed to hire their own personal attendant after demonstrating their ability to manage and supervise the performance of the attendant.

Key Considerations for Consumer Directed Services Under a Federal Waiver

A variety of issues and considerations were explored during the development of the proposed Medicaid-funded consumer-directed personal assistance services model. A home-and community-based services waiver under §1915(c) of the Social Security Act allows Virginia to waive statewideness and comparability and to offer services beyond what is normally available through the State Plan. However, the waiver must include these three assurances:

1. It must target services to a population, who would, without the consumer-directed services provided under the 1915 (c) waiver, require institutionalization in either a nursing facility, ICF/MR or hospital, the cost of which would be Medicaid reimbursed.

2. Virginia must demonstrate that the cost of consumer-directed services offered under the waiver will be no more than the cost of the institutional services which would be otherwise provided. This is demonstrated through estimates of the number of persons to be served and the expected cost for such home-and community-based services.

3. Virginia must assure comparable criteria and assessments for both the institutionalized and waiver populations, development of a plan of care and formal monitoring of the plan of care, periodic reevaluations of the waiver recipient's level of care, and means of assuring provider qualifications are met and quality assurance is performed.

In addition, federal Medicaid rules prohibit Medicaid payments being made to the consumer and prohibit the delivery of these services by a member of the client's family.

Comments Received from the Stakeholders on a Draft of this Report

The Department of Medical Assistance Services recently circulated a draft of this report to the stakeholders involved in the provision of personal assistance services to the elderly and consumers with disabilities to solicit comments on the proposed model for consumer-directed personal assistance services. The comments received indicated that there are still issues that require resolution as we develop the regulations and waiver application. Those involved with the frail elderly are concerned that the proposed model is too open for abuse and puts the elderly consumer at risk. Those involved with the consumers with disabilities are concerned that the proposed model is still too restrictive and does not really

afford the consumer the autonomy and independence to oversee the assistance needed. A summary of the major issues that still are a concern to the various stakeholders are described in the following chart.

Table 1: Comments Received From Stakeholders On A Draft Of this Report

Issue	Comments Received from Personal Care Agency/Aging Community	Comments Received from the Disability Community
Personal Care Aide/Attendant Standards and Qualifications	Personal care attendants should be required to have skilled (medical or geriatric) training in order to provide personal care services.	Personal care attendants need only minimum requirements to perform personal care services.
Development and Monitoring of Plan of Care	There is a need to provide more oversight to ensure the recipient is receiving the care needed and to ensure the attendant is fulfilling his/her duties in the best interest of the recipient. Current oversight measures under the proposed program will leave the frail elderly at risk for abuse, neglect, or financial exploitation. Assessments should be done every six months, with quarterly visits conducted by registered nurses. The development of the plan of care and the oversight provided should be supervised by a registered nurse, not a social worker or case manager.	There is too much oversight in the proposed program. People with disabilities and their personal care attendants should be allowed to develop their own plan of care and oversee it without the supervision of a nurse, social worker, or case manager.
Clinical Supervision of Recipient Medical Needs	Nursing supervision is important to provide for recipients because registered nurses can monitor the recipients' medical needs and supervise attendants to ensure they are performing their responsibilities in a safe and correct manner.	People with disabilities are already well aware of their own medical needs, and do not require the supervision of a registered nurse.
Program Eligibility	The cognitive criteria required to determine if a person is mentally capable of hiring, supervising, and firing an attendant is not sufficient. The frail elderly may be judged to be competent by the criteria used, but they may still have a judgment impairment which could leave them open to abuse, neglect, or financial exploitation. Due to the risk for abuse, neglect, or financial exploitation, exclude the elderly (persons 60 and older) from this program.	This program should not exempt people with some cognitive impairments.
Reimbursement	It is unfair to the certified nursing assistants (CNA's) to provide the untrained personal care attendant with the same reimbursement rate.	Reimbursement rates should be the same for CNA's and untrained personal care attendants. If not, rates will not be competitive enough to attract reliable people.

Table 1: Comments Received From Stakeholders On A Draft Of this Report (con't.)

Issue	Comments Received from Personal Care Agency/Aging Community	Comments Received from the Disability Community
Providers	The requirements for agencies providing consumer-directed personal care services should be the same as requirements for providers providing the full range of personal care services. Provider agencies will be required to assume most of the responsibilities related to the personal attendant with relatively little oversight.	Change the provider requirements to have different standards for agencies that do not intend to provide the full range of personal care services.
Liability	Concerned where personal liability stands when the agency has little oversight over attendant. The personal care attendant, for tax purposes, is considered to be the agency's employee. The agency has no control in terms of hiring, training, supervising, or firing the attendant, yet it may still be held liable in case of lawsuit or personal injury to the attendant or recipient.	Personal care attendant should be considered an independent contractor for employment purposes. As an independent contractor, liability falls upon personal care attendant.
Implementation of Project	For minimum risk to the Commonwealth and recipients, implement a pilot program for disabled recipients between the ages of 18 and 59.	Implement the program under the waiver state-wide to all eligible recipients regardless of age

The proposed model, described in detail below, represents our best thinking to date on the issues and the program features of the consumer-directed personal assistance model. We have reviewed numerous approaches to the provision of consumer-directed personal assistance programs and have attempted to draw on the best aspects of all of those approaches, while avoiding some of the pitfalls of the past. We present this document now, not because we believe we have resolved all of these issues or because we are firmly committed to every feature. To the contrary, we present this document in the hope that we can continue to solicit the thoughts of all those with a stake in the future of consumer-directed services.

Proposed Services To Be Provided Under a Consumer-Directed Personal Assistance Services Waiver

Consumer-directed services have a tremendous impact on consumers. Consumers who are capable of and desire to manage their own service benefit psychologically. Consumers who hire, train and supervise their own attendants report less staff turnover, greater flexibility to meet the consumer's schedule and preferences, and greater satisfaction with the way the attendant performs. Consumers are more able to obtain coverage for times that agencies typically have had difficulty covering. Conversely, consumers in a consumer-directed model must assume a great deal more responsibility and have fewer resources when problems arise than a consumer in an agency-directed service. The key to whether the impact on consumers is positive or negative rests heavily on the quality of the initial assessment and explanations conducted at preadmission screening, the consumer training provided and, ultimately, on the consumer's ability to be self-directed.

The proposed core services to be provided under this waiver are personal assistance services and attendant care services. These services are defined in The HCFA waiver application as follows:

- **Personal assistance services** are related to the consumer's physical requirements, such as assistance with eating, bathing, dressing, personal hygiene, activities of daily living, bladder and bowel requirements, and taking medications. Services may include assistance with the preparation of meals, but does not include the cost of meals themselves. When specified in the plan of care, they may also include services which are essential to the health and welfare of the beneficiary, such as housekeeping chores like bedmaking, dusting and vacuuming. These services do not include the performance of skilled nursing services.

- **Attendant care services** are hands-on care, of both a supportive and health-related nature, specific to the needs of the medically stable, physically disabled individual. Supportive services are those which substitute for the absence, loss, or diminution, or impairment of a physical or cognitive function. This service may include skilled or nursing care to the extent permitted by state law. Housekeeping activities which are incidental to the performance of care may also be furnished as part of this activity.

Administrative Responsibility for the Waiver

The Department of Medical Assistance Services (DMAS) is the sole agency responsible for determining client eligibility for Medical Assistance under Title XIX of the Social Security Act. As such it will assume all administrative responsibilities for providing consumer-directed personal assistance services to elderly and disabled persons. This includes ensuring that all requirements of the waiver are met, including performing quality assurance and utilization control procedures, and for making payments to providers. Providers may include the nursing home pre-admission screening teams that perform the initial assessment and authorization of services, and the agencies that serve as the fiscal agent for the consumer and monitor the provision of services according to the established plan of care. Any authorization and plan of care for consumer-directed personal assistance services will be subject to the approval of DMAS prior to Medicaid reimbursement for waiver services.

Providers of Consumer-Directed Personal Assistance Services

In Virginia, an infrastructure to provide consumer-directed personal assistance waiver services already exists. There are approximately 160 Personal Care providers that have provider agreements with DMAS under the agency-directed model for the delivery of personal care services. Typically, these providers offer a range of services, such as home health, companion services, meals on wheels and case management. Any of these agencies could provide the fiscal agent functions necessary to implement consumer-directed services, along

with the service coordination, since these are already components of the personal care service. It would cost these agencies no more to provide this more limited type of service. An advantage to utilizing provider agencies that offer both agency-directed and consumer-directed models of service is that it offers the consumer the flexibility to switch to the agency-directed model if the consumer no longer wishes to assume full responsibility for the performance of the personal care attendant.

Centers for Independent Living (CILs) may also want to enroll as consumer-directed services providers. CILs provide peer counseling, information and referral, independent living skills training, and advocacy to people with all types of disabilities. There are ten private non-profit centers in Virginia operated primarily by people with disabilities. An eleventh independent living program is operated by the Department of Rehabilitative Services at the Woodrow Wilson Rehabilitation Center. The CILs are not likely to want to provide the agency-directed model of service in addition to the consumer-directed model. DMAS will establish different provider standards for organizations that do not intend to offer the full range of personal care services.

The proposed role of the provider agencies in the consumer-directed personal assistance model is:

- Provider agencies must serve as the fiscal agent and have the capacity to provide a payroll agent payment mechanism as defined by the federal Internal Revenue Service for a consumer electing to be the "employer" of his attendant.

- Providers must employ or contract with a service coordinator who is responsible for completing reassessments every six months, for authorizing the initial service plan and any subsequent changes in the consumer service plan, and for making, at a minimum, quarterly on-site visits. The service coordinator can be a nurse, social worker, or a case manager that meets the knowledge, skills and abilities established by DMAS for screening persons for admission to adult care residences.

- Supervision of attendant-assisted basic personal care services will be the responsibility of the consumer to the extent specified in the consumer's plan of care. However, the service coordinator must be available as needed for training and service delivery problem solving as needed to ensure the health, welfare and safety of consumers.

- Provider agencies must have the capability, either directly or under (contract) purchase arrangements, to provide an array of support activities which will assist consumers in managing their personal assistance service and in other aspects of independent living.

Qualifications of Personal Attendants

Consumers will hire their own personal attendant and then manage and supervise their attendants' performance. Attendants are considered a physical extension of the consumer's body, compensating for parts of the consumer's own body which no longer function. The mentally alert consumer is completely in control of his or her own service. Therefore, the attendant should be able to provide, at the consumer's direction, any service need without restriction. Proposed attendant qualifications include:

- Be 18 years of age or older;
- Have the required skills to perform personal care and attendant care services as specified in the consumer's plan of care;
- Possess basic math, reading, and writing skills;
- Possess a valid Social Security number; and
- Be willing to submit to a criminal records check.

Attendants cannot be members of the consumer's family. Based upon the current agency-directed model for personal care services, family is defined as parents, spouse, children, siblings, grandparents and grandchildren. In addition, anyone who has legal guardianship or is committee for the consumer is also prohibited from being an attendant under this program.

Consumer Choice and Informing Consumers of Rights, Risks and Responsibilities

A consumer-directed model relies on the ability of the consumer to be self-directed and educated in the management of their own service. In order for a consumer-directed model to be successful, consumers must be adequately and accurately informed of their rights, risks and responsibilities at the time the assessment and plan of service are developed and the consumer is given the choice of consumer-directed service. The process of identifying consumers and planning services must be based upon the concepts of consumer choice, informed consent and assumption of risk. In the consumer-directed model, DMAS would need to rely on the skills of the pre-admission screening assessor to both evaluate the consumer's cognitive status and to explain to the consumer and consumer's family or friends the risks and responsibilities incumbent on the consumer in a consumer-directed service model.

DMAS plans to develop clear and simple written communication that outlines the consumer's risks and responsibilities and defines the role the fiscal agent agency plays in a consumer-directed model. This communication is necessary to minimize the possibility that the consumer underestimates the degree of individual responsibility he or she assumes in this model. At the point that the consumer opts to receive consumer-directed service, the screening assessor and consumer must document that the consumer has been apprised and understands all rights, responsibilities and risks of managing the personal attendant service and has made an informed choice to assume those risks. The fiscal agent agency also should be responsible for informing the consumer of his or her rights, risks and responsibilities in a consumer-directed service.

Program and Financial Eligibility Requirements for Consumer-Directed Personal Assistance Services

Consumer-directed services will be available to the following elderly and disabled persons:

- 18 years of age and older;
- No cognitive impairment (no proxies by family members, close friends, or agencies will be allowed);
- Demonstrated ability to communicate sufficiently to hire, train and provide instruction regarding their needs;
- Be financially eligible for Medicaid -- the income level will be the same as for the Elderly and Disabled waiver program, which is 300% of the current Supplemental Security Income payment standard for one person; and
- Must meet Medicaid nursing or pre-nursing facility criteria and be at risk of nursing home placement.

Initial Assessment and Authorization of Consumer-Directed Personal Assistance Services

To ensure that Virginia's home and community-based care waiver programs, such as the consumer-directed services, serve only individuals who would otherwise be placed in a nursing facility, consumer-directed services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at imminent risk of nursing facility admission. Consumer-directed services must be the critical service that enables the individual to remain at home rather than being placed in a nursing facility. In order to ensure that these new services can be provided in conjunction with the agency-directed model

currently available to eligible individuals in the Elderly and Disabled Waiver, the same assessment, authorization process, and nursing facility criteria will be used.

Who can perform the assessments and authorization of consumer-directed personal assistance services?

The individual's status as an individual in need of consumer-directed personal assistance services will be determined by the Nursing Home Preadmission Screening team after completion of a thorough assessment of the individual's strengths, needs and available support. The Nursing Home Preadmission Screening Committee/team are the entities that have contracted with the DMAS since 1982 and are responsible for performing Nursing Home Preadmission Screening for nursing home or community-based care placements. For individuals in the community, this entity is a committee comprised of staff from the local health department and local department of Social Services. For individuals in an acute care facility who require screening, the entity is a nurse and/or a social worker. A physician is also a member of both the local committee or acute care team. All preadmission screening teams would receive training on the concepts of consumer-direction, understanding that personal assistance aides are an inter-dependent extension of the consumer's body, the capacities for independent living through effective personal assistance programs, and understanding and accessing the alternatives to nursing home placement. Screening and preauthorization of consumer-directed personal assistance services by the Nursing Home Preadmission Screening Committee/team or DMAS staff is mandatory before Medicaid will assume payment responsibility for this service.

How is the assessment for consumer directed personal assistance services made?

An essential part of the Nursing Home Preadmission Screening team's decision-making process is determining the level of care required by conducting a comprehensive assessment and by applying existing nursing facility criteria. The current pre-admission screening assessment process, using the Uniform Assessment Instrument (UAI) and the established criteria for waiver services, provides a comprehensive identification of the functional, medical, and psychosocial status of the consumer, as well as an assessment of his or her physical environment and support system. Within this assessment, the screener can objectively assess the consumer's cognitive abilities through an assessment of the consumer's orientation to person, place and time (the consumer's awareness of his or her environment) and any behaviors which may be detrimental to the life, comfort, safety and/or property of the consumer or others. The established assessment definitions and criteria for determining dependency or semi-dependency in these two areas allow for a relatively objective assessment, through a standardized process, of the person's ability to independently manage their own service. The UAI also includes an optional Mini-Mental Status Questionnaire that could be used to further assess the person's cognitive functioning if the screener had any doubts about the person's cognition. Supplemental questions may be added to the UAI for this program in order to provide information on the consumer's ability to manage his or her attendant's provision of care. DMAS' current database shows that approximately 30% of the total population currently enrolled in the Elderly and Disabled waiver have some cognitive

impairment (disorientation and/or aggressive, abusive or disruptive behaviors) that would preclude their choice of consumer-directed service.

The consumer's ability and means to communicate are also assessed via the UAI. The screener would be instructed to assess the consumer's ability to communicate adequately to supervise and train his or her own attendant broadly to include any form of communication that can be understood by the attendant. Thus, a consumer who used a communication board, computer, sign language or any other form of expression could be considered able to direct his or her own service as long as the attendant could understand that consumer's communication.

The screener would also explore with the consumer his available back-up in the event that the attendant did not show up for work. In a consumer-directed service, the burden for meeting daily activities of living, if the attendant doesn't show up, falls on the consumer, unlike the agency-directed service where an agency that has a ready supply of additional staff is responsible for providing a substitute aide. The screener would also discuss with the consumer his comfort level dealing directly with the attendant when problems arise. The role of the screener in exploring back-up and consumer comfort level with confrontation would not be to deny the choice of consumer-directed service but to assure that there is complete identification and discussion of any potential problems.

In implementing a consumer-directed model, DMAS would have to provide training to the pre-admission screening assessors regarding when the option of consumer-directed service is appropriate and when a decision to deny consumer-directed service could be made. The choice of consumer-directed services could only be offered to consumers who have no cognitive impairment and who can communicate adequately to supervise and train their own attendant. Any decision made by the screening team to deny the choice of consumer-directed service could be appealed by the consumer to DMAS.

Development of the Plan of Care

The development of the plan of care begins with the initial assessment completed by the Nursing Home Pre-Admission Screening Team. This initial assessment evaluates the consumer's capacity and willingness to select and direct the attendant, establishes the consumer's functional capacity, determines the absence or presence of any physical illness as distinguished from functional disability, and evaluates the nature of the home environment and the availability of family or friends willing to assist in providing care for the consumer. This information will be forwarded to the provider agency and the consumer. The provider agency, through the use of a service coordinator, and the consumer must negotiate and sign a plan of care based on the assessment of consumer needs. The plan of care must contain the following:

- The goals for service as established by the consumer;
- A description of how the service will be provided, including measurable objectives; tasks to be done, and expected time frames;

- The time and number of service hours to be provided;
- Documentation of health service hours to be provided;
- A description of the back-up systems in place for attendant care services;
- Any unique circumstances established by the assessment;
- A clear description of the responsibilities of the provider agencies, attendants and consumer in the delivery of services; and documentation of attendant and/or consumer training needed;
- Signatures of the provider agency and the consumer.

Quality of Services

The specter of decreased quality of service accompanies a consumer-directed model which lacks the usual agency control and monitoring included in an agency-directed model. In a consumer-directed model, it is imperative that consumers understand that it is their responsibility to manage the performance of the attendant. The consumer must ensure the quality of the service he or she receives and must know what steps to take when quality of service is less than desired (request training for themselves or the attendant, fire and recruit for a new attendant, etc.).

Providers and policymakers have much more experience and comfort with service models that rely on an external monitor to assess quality of services. Consumers in the disabilities community continue to stress that there is no one in a better position to assess the quality of a service than the consumer of that service. These consumers argue that the risks in a consumer-directed service are, if anything, less than in an agency-directed model. Unlike the agency-directed model, the attendant is directly answerable to the consumer he serves and the consumer is empowered to replace the attendant if he or she is not satisfied with the service. As long as the consumer desires to have control of his own service delivery and is mentally competent to assume that control, he or she should have the right to assess his own safety needs and to take risks, just as do any of us, in the pursuit of services to meet those needs. At least on some level, providers and policymakers do recognize that consumers are in the best position to determine the quality of the service received. In the long-term care service system, where the goal is maintenance of the consumer at home, providers and policymakers alike have tended to rely increasingly on measures of consumer satisfaction as a means of assessing quality of care. The National Rehabilitation Hospital Research Center recently conducted a study comparing consumers of Virginia's Personal Assistance Services program (the consumer-directed program provided via DRS) with consumers who received personal assistance from another source. The group of persons receiving consumer-directed service from the DRS program scored consistently higher (more satisfied) than their counterparts receiving service from another source.

This trust that the consumer knows best does not abdicate the state's responsibility for appropriately structuring a publicly-funded consumer-directed service program that minimizes the risk of injury or exploitation. The typical components of quality assurance include:

- the assessment of needs and service planning process;
- freedom of choice and informed consent of the consumer;
- standards for providers;
- supportive services; and
- periodic oversight.

The service assessment and planning process must assure that the needs and abilities of the person are accurately identified and the service plan provides an appropriate means of meeting those needs and recognizing those abilities. Only those persons who are able to direct and wish to direct their own services should be offered the choice of consumer-directed service. The informed consent of the consumer must be an explicit process that clearly apportions the responsibilities and risks of the consumer. The standards established by the state must allow the consumers flexibility and direct control while minimizing risk. The supportive services must offer the consumer alternatives of administrative, clinical and quality assurance functions without the state removing the consumer's overall autonomy and control. Finally, there must be some degree of oversight by the state agency to assure that services are being provided that meet public policy goals and objectives.

Utilization Review and Control Activities

In the current agency-directed model, DMAS requires that the provider employ a RN Supervisor to visit the consumer's home every 30 days to monitor the provision of services. The RN Supervisor is responsible for noting any changes in the consumer's condition and the need for any change in the plan of service. In the traditional consumer-directed model used by persons with disabilities, there is no such formal monitoring and oversight provided. The provision of a consumer-directed service within the context of a Medicaid waiver inherently requires some modification to the model used by persons with disabilities in a non-Medicaid environment.

Federal regulations for waivers require that there be a formal process of periodic reevaluation of the consumer's strengths, needs and available support, authorization of any change to the plan of service and professional staff available to respond to any medical problems or change in overall needs. These regulations require that the qualifications of persons performing these functions for someone in the waiver be similar to the qualifications of persons who perform the same functions for persons entering a nursing facility.

For this reason, DMAS would require, in a consumer-directed model, the provider agency to employ or contract with a service coordinator who is a nurse, social worker or case

manager that meets the knowledge, skills and abilities established by DMAS for screening of persons for admission to an Adult Care Residence. This service coordinator would be responsible for conducting reassessment every six months, for authorizing changes to the plan of service, and for making, at a minimum, quarterly on-site visits. Although the service coordinator would not necessarily have to be a RN, the provider would have to assign a nurse as service coordinator for those instances when a consumer had a medical problem that needed to be addressed. The proposed consumer-directed approach for monitoring the services the consumer requires recognizes the federal requirements, as well as the fact that persons with disabilities are already well aware of their own medical needs and do not require the supervision of a registered nurse. In addition, federal regulations no longer require nursing oversight of personal care services.

However, it is imperative that consumers understand their responsibility to report to the service coordinator any changes in his condition and social support as they occur. DMAS statistics regarding the frequency with which changes in plans of service are currently made show that 94% of all the persons over age 55 and 92% of all non-elderly persons who receive personal care have two or fewer changes in their plan of service per year. Despite the consumer's responsibility to direct their own services, the program will require the service coordinator to make quarterly home visits to reassess and authorize revisions to the plan of service as changes in condition and social support are reported.

Reimbursement

Under the agency-directed model, DMAS reimburses the provider agency $9.50 for every hour of service provided to the consumer ($11.50 per hour for providers in Northern Virginia). Although the wage paid to the aide that provides the service varies, on average the aides receive between $5 and $7 per hour (this average includes the average wage paid in Northern Virginia which is significantly higher than that paid in the rest of the state). While many provider agencies do not offer aides any benefits, some agencies do offer stipends for transportation and additional pay for holidays and weekends. The additional $4.50 or more per hour that the agency receives for each hour of personal care provided to each consumer is applied toward administrative expenditures which include the cost of providing RN oversight, meeting OSHA requirements, performing a criminal record check and any fiscal agent responsibilities.

In the consumer-directed model, reimbursement rates will be developed to ensure equity in payment to the personal care aides and to recognize the administrative costs associated with this model. DMAS will evaluate the feasibility of establishing a reimbursement rate which more accurately reflects the administrative costs through the separation of administrative functions and service provision. Whether this model's costs are equal to or less than the agency-directed model will be determined as the appropriate reimbursement rate is developed

Medicaid providers are reimbursed retrospectively based on invoices submitted for services delivered. Provider agencies will bill DMAS for services certified by the consumer as provided by the attendant. The provider agency will issue checks in the attendants' names but give the checks to consumers to retain the consumer's role as the true employer of the attendant or they will pay the attendant directly on behalf of the consumer.

Both the agency-directed and the consumer-directed personal assistance models are designed to be cost-effective alternatives to institutionalization. Thereby, both models save the Commonwealth money in the provision of long-term care services. The purpose of the consumer-directed waiver will be to offer another cost-effective community-based alternative to the consumer at risk of institutionalization, not to demonstrate that one model is more cost effective than the other.

Timeline for the Development of a Medicaid-Funded Consumer-Directed Personal Assistance Services in Virginia

In order to meet the mandate of the 1996 General Assembly to implement a consumer-directed alternative to the agency-directed model of personal care services already in place, DMAS is requesting a language in the budget during the 1997 General Assembly session that would provide the agency with the authority to promulgate emergency regulations. If this language is approved by the General Assembly, the consumer-directed personal assistance services waiver can be implemented effective July 1, 1997. Without the authority to promulgate emergency regulations, DMAS must promulgate regulations via the full regulatory process prior to implementing the program. The full regulatory process takes an average of 14 months to complete. Emergency regulations will shorten the process by at least six months. HCFA waiver guidelines require that the State's regulatory process be complete prior to the final approval of the waiver. Therefore, DMAS waiver submission will coincide with the regulatory process.

Appendix I provides the legislative mandate for implementing a consumer-directed personal assistance service model. Appendix II provides a detailed list of the tasks required to develop the waiver and the emergency regulations to support the implementation of this program.

Summary Comparison of the Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver

DMAS has had a successful personal assistance services program under the Elderly and Disabled Waiver Program since 1982. Many features of this agency-directed model have been retained in the proposed consumer-directed personal assistance services waiver. This similarity will allow the consumers flexibility to choose which program suits their needs and to easily switch programs if desired. However, in order to recognize the principles of consumer-

directed services which increase the consumer choice and ability to manage the services they receive, some aspects of the program are different from the agency-directed program. These similarities and differences are summarized in the following chart.

Table 2: Summary Comparison Of The Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver

Program Features	Elderly And Disabled Waiver: Personal Care Services (Agency-Directed Model)	Proposed Consumer-Directed Personal Assistance Services Waiver
Covered Services	Reimbursement for services of personal care aides who assist with the recipient's activities of daily living such as bathing, dressing, transferring, ambulation, and meal preparation. Aides do not perform skilled nursing services.	Same. In addition, attendants also provide supportive services which substitute for the absence, loss, or diminution, or impairment of a physical or cognitive function.
Providers	Personal Care agencies that are approved by DMAS.	Same. In addition, Centers for Independent Living may also enroll as providers. DMAS will establish different provider standards for organizations that do not intend to offer the full range of personal care services.
Personal Care Aide/Attendant Standards and Qualifications	Must be registered as a certified nurse aide, or graduate from an approved education curriculum, or receive pre-approved DMAS training from the provider agency. Other requirements include: documentation of a positive work history, a copy of the required certification, and at least two reference checks. Attendants may not be a member of the consumer's family, have legal guardianship, or is committee for the consumer.	Must be 18 years of age or older; have required skills to perform personal assistance services specified in the consumer's plan of care; possess basic math, reading, and writing skills; possess a valid social security number; and be willing to submit to a criminal records check. Attendants may not be a member of the consumer's family, have legal guardianship, or is committee for the consumer.
Personal Care Aide/Attendant Hiring/Firing	Provider agency responsible.	Consumer responsible.
Personal Care Aide/Attendant Training	Provider agency responsible.	Negotiated between the consumer and the provider agency.
Personal Care Aide/Attendant Supervision	Provider agency responsible; supervision provided by a nurse; supervisor makes a home visit once a month.	Consumer responsible to the extent specified in the consumer's plan of care. However, a service coordinator from the provider agency must be available for problem solving and will make, at a minimum, quarterly home visits. Service coordinators may be a nurse, social worker, or a case manager.

Table 2: Summary Comparison Of The Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver (con't.)

Attendant Payment	Provider agency pays the aide directly.	Provider agency serves as a fiscal agent. Provider agency will issue checks in the attendant's name but give the check to the consumer to pay the attendant or will pay the attendant directly on behalf of the consumer.
Program Features	**Elderly And Disabled Waiver: Personal Care Services (Agency-Directed Model)**	**Proposed Consumer-Directed Personal Assistance Services Waiver**
Financial Eligibility for Consumers	Income level is 300% of the current Supplemental Security Income payment standard for one person or medically needy income limit (spend down). Co-payment responsibilities.	Same.
Program Eligibility	1) Meet nursing or pre-nursing facility criteria; 2) Be 65 years and older or disabled and 3) Are determined to be at risk of nursing home placement if waiver services were not available.	Same. Additional criteria include: If disabled, must be 18 years of age and older; no cognitive impairment (no surrogate decision maker); and ability to communicate sufficiently to hire, train and provide instructions.
Assessment and Authorization of Services	Completed by Nursing Home Pre-Admission Screening Teams. The Uniform Assessment Instrument (UAI) is used to establish whether the program criteria is met.	Same. Supplemental questions may be added to the UAI to provide information on the consumer's ability to independently manage his or her care. Consumer-Directed services will only be offered to consumers that can demonstrate that life and health safety needs will be met.
Development and monitoring of the Plan of Care	Completed by the provider agency and the consumer, based upon needs identified on the UAI and the initial plan developed by the Pre-admission Screening Teams. Plan of care monitored monthly by a nurse supervisor.	The provider agency, through the use of a service coordinator, and the consumer must negotiate a plan of care based upon needs identified on the UAI and the initial plan developed by the Pre-admission Screening Teams. The plan of care must clearly state the responsibilities of all involved parties. Service coordinator will perform, at a minimum, quarterly on-site reviews and will authorize any changes to the plan of care.
Quality of Services	Components of state responsibilities include the assessment of needs and service planning process; freedom of choice and informed consent of the consumer; standards for providers; supportive services; and periodic oversight.	Same. In addition, consumer must also ensure the quality of the service received and know what steps to take if there are problems.

Table 2: Summary Comparison Of The Elderly and Disabled Waiver and the Proposed Consumer-Directed Personal Assistance Waiver (con't.)

Utilization Review and Control Activities	Agency employs a nurse supervisor to visit the home every 30 days; reassessment is completed every six months; and DMAS will also perform periodic agency office and home visits.	Agency employs a service coordinator who will make quarterly visits to the home and complete a reassessment every six months. DMAS will perform periodic agency office and home visits.
Program Features	**Elderly And Disabled Waiver: Personal Care Services (Agency-Directed Model)**	**Proposed Consumer-Directed Personal Assistance Services Waiver**
Reimbursement	$9.50 per hour of service ($11.50 per hour for providers in Northern Virginia). Aides receive between $5 and $7 per hour.	Reimbursement rates will be developed to ensure equity in payment to the personal care aides and to recognize the administrative costs associated with this model. DMAS will evaluate the feasibility of establishing a reimbursement rate which more accurately reflects the administrative costs through the separation of the administrative functions and service provision.

GENERAL ASSEMBLY OF VIRGINIA -- 1996 SESSION

HOUSE JOINT RESOLUTION NO. 125

Expressing the sense of the General Assembly that the Department of Medical Assistance Services request a waiver or waiver amendment to offer consumer-directed personal assistance services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities.

Agreed to by the House of Delegates, March 9, 1996
Agreed to by the Senate, March 9, 1996

WHEREAS, the Department of Medical Assistance Services has evaluated the feasibility and advisability of amending the existing Elderly and Disabled Waiver to allow consumers to hire their own personal attendant after demonstrating their ability to manage and supervise the performance of that attendant; and

WHEREAS, the Department has the option to (i) continue to contract only with agencies for the provision of personal care for other eligible clients; (ii) pay for services offered by individuals rather than agencies; or (iii) offer both options, which would be available based on the consumer's ability to manage his own care; and

WHEREAS, the findings of the study pursuant to House Joint Resolution No. 539 (1995) estimates that 1,176 consumers with disabilities who are under age 65 and 1,613 consumers over age 65 might choose the option of consumer-directed personal assistance services, if available; and

WHEREAS, the implementation of the recommendations of the study pursuant to HJR No. 539 (1995) appears to be amenable to Congressional Medicaid reform; and

WHEREAS, the immediate benefit of consumer-directed personal assistance services includes an increased level of independent living which is beneficial and productive for all Virginians; now, therefore, be it

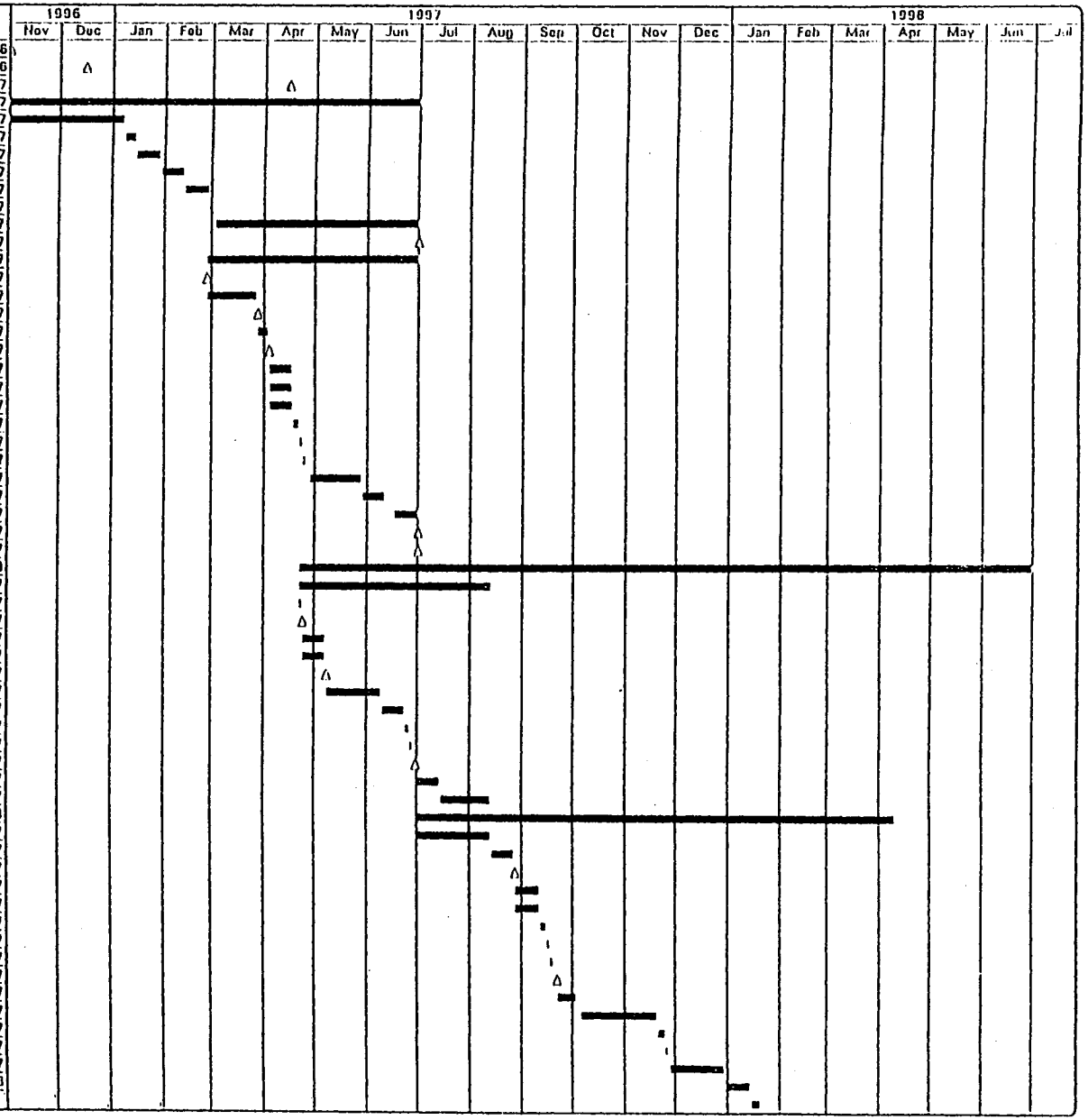
RESOLVED by the House of Delegates, the Senate concurring, That the Department of Medical Assistance Services, with all due haste, request a waiver or a waiver amendment from the federal government and implement with all due haste consumer-directed personal assistance services, in conjunction with the agency-directed model currently available, to Virginians who are elderly or who have disabilities; and, be it

RESOLVED FURTHER, That the Department of Medical Assistance Services be requested to examine existing and available waivers or other options to provide personal assistance services through a consumer-based model of service delivery.

The Department shall report its findings and recommendations, and progress on the implementation of consumer-directed personal assistance services, by November 1, 1996, to the Governor and the General Assembly.

TIMELINE: CONSUMER-DIRECTED SERVICES WAIVER

No #	Task Name	Duration	Start	End
1	Report to Gov & Gen Assembly	0.00 d	Nov/01/96	Nov/01/96
2	Budget Amend to DPB/GOV	0.00 d	Dec/16/96	Dec/16/96
3	Budget Amends Approved by GOV	0.00 d	Apr/15/97	Apr/15/97
4	Waiver Process	165.00 d	Nov/01/96	Jun/30/97
5	Draft Waiver	44.00 d	Nov/01/96	Jan/07/97
6	Coord w/HCFA (informal)	5.00 d	Jan/08/97	Jan/14/97
7	Revise Draft	10.00 d	Jan/15/97	Jan/29/97
8	Coord w/Staff	10.00 d	Jan/30/97	Feb/12/97
9	Director's Approval	10.00 d	Feb/13/97	Feb/27/97
10	Mail to HCFA	1.00 d	Feb/28/97	Feb/28/97
11	HCFA Processing	85.00 d	Mar/03/97	Jun/30/97
12	Waiver Approved	0.00 d	Jul/01/97	Jul/01/97
13	Emergency Reg Process	88.00 d	Feb/26/97	Jun/30/97
14	Begin Regulatory Process	0.00 d	Feb/26/97	Feb/26/97
15	Prepare Emergency Regs	22.00 d	Feb/26/97	Mar/27/97
16	Draft Regs to Reg Coord	0.00 d	Mar/28/97	Mar/28/97
17	Finalize Emergency Regs	5.00 d	Mar/28/97	Apr/03/97
18	Responsible Div Approve	0.00 d	Apr/04/97	Apr/04/97
19	Management Team/OAG Review	10.00 d	Apr/04/97	Apr/17/97
20	Management Team Review	10.00 d	Apr/04/97	Apr/17/97
21	OAG Review	10.00 d	Apr/04/97	Apr/17/97
22	Policy Director Reviews	2.00 d	Apr/18/97	Apr/21/97
23	Admin Proofs the ER	2.00 d	Apr/22/97	Apr/23/97
24	Director Approves	2.00 d	Apr/24/97	Apr/25/97
25	DPB Review	22.00 d	Apr/28/97	May/28/97
26	Secretary Reviews	10.00 d	May/29/97	Jun/11/97
27	Governor Reviews	10.00 d	Jun/17/97	Jun/30/97
28	Adopt & File w/Registrar	0.00 d	Jul/01/97	Jul/01/97
29	Effective Date	0.00 d	Jul/01/97	Jul/01/97
30	APA Process (Follow-on to ER)	300.00 d	Apr/22/97	Jun/30/98
31	NOI Process	80.00 d	Apr/22/97	Aug/13/97
32	Prepare NOI	2.00 d	Apr/22/97	Apr/23/97
33	Responsible Div Approve	0.00 d	Apr/24/97	Apr/24/97
34	AG Review	10.00 d	Apr/24/97	May/07/97
35	DMAS Staff Review	10.00 d	Apr/24/97	May/07/97
36	Director Approve	0.00 d	May/08/97	May/08/97
37	Review by DPB	22.00 d	May/08/97	Jun/09/97
38	Review by Secretary	10.00 d	Jun/10/97	Jun/23/97
39	Notify Governor	3.00 d	Jun/24/97	Jun/26/97
40	SEC Authorize Filing	1.00 d	Jun/27/97	Jun/27/97
41	File Notice of Intent	0.00 d	Jun/30/97	Jun/30/97
42	Publish Register	10.00 d	Jun/30/97	Jul/14/97
43	Public Comment Period	22.00 d	Jul/15/97	Aug/13/97
44	Proposed Reg Process	196.00 d	Jun/30/97	Apr/10/98
45	Prepare Proposed Regs	32.00 d	Jun/30/97	Aug/13/97
46	Complete Proposed Regs	10.00 d	Aug/14/97	Aug/27/97
47	Responsible Div Approves	0.00 d	Aug/28/97	Aug/28/97
48	Budget Div Reviews	10.00 d	Aug/28/97	Sep/11/97
49	OAG Reviews	10.00 d	Aug/28/97	Sep/11/97
50	Pol Dir Reviews	2.00 d	Sep/12/97	Sep/15/97
51	Dep Dir Reviews	2.00 d	Sep/16/97	Sep/17/97
52	Admin Proofs Reg	2.00 d	Sep/18/97	Sep/19/97
53	Director Approves	0.00 d	Sep/22/97	Sep/22/97
54	Fiscal Impact Analysis	10.00 d	Sep/22/97	Oct/03/97
55	DPB Economic Analysis	32.00 d	Oct/06/97	Nov/20/97
56	DMAS Rebuttal	3.00 d	Nov/21/97	Nov/25/97
57	Director Approves	1.00 d	Nov/26/97	Nov/26/97
58	DPB Review	22.00 d	Nov/28/97	Dec/30/97
59	Review by Secretary	10.00 d	Dec/31/97	Jan/14/98

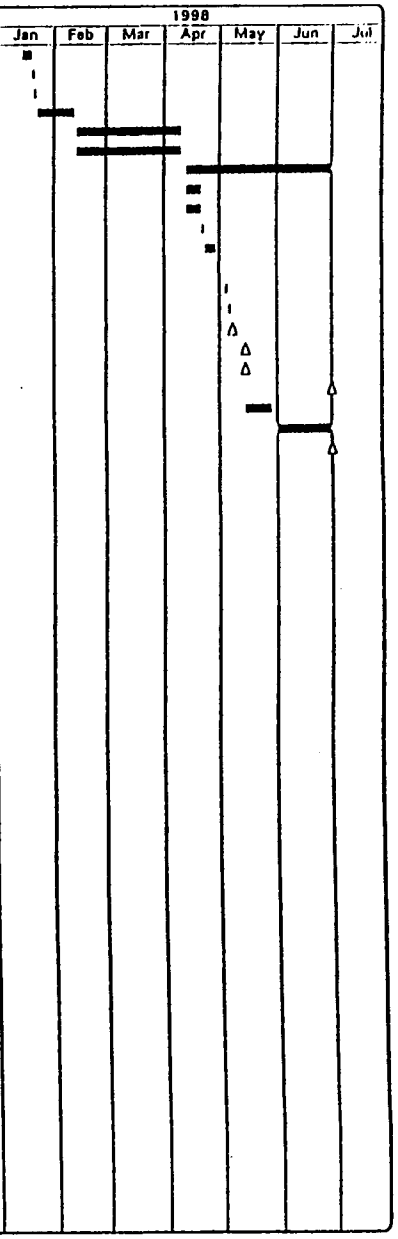


Milestone Δ Summary Fixed

Append. I

TIMELINE: CONSUMER-DIRECTED SERVICES WAIVER

No #	Task Name	Duration	Start	End
60	Notify Governor	3.00 d	Jan/15/98	Jan/20/98
61	SEC Authorize Filing	1.00 d	Jan/21/98	Jan/21/98
62	File Proposed Regs w/Registrar	1.00 d	Jan/22/98	Jan/22/98
63	Publish Proposed Regs	15.00 d	Jan/23/98	Feb/12/98
64	Proposed Regs to GOV Review	40.00 d	Feb/13/98	Apr/10/98
65	Public Comment Period	40.00 d	Feb/13/98	Apr/10/98
66	Final Reg/SPA Process	56.00 d	Apr/13/98	Jun/30/98
67	Prep. Commenter's Summary (CS)	7.00 d	Apr/13/98	Apr/21/98
68	Finalize Regs	7.00 d	Apr/13/98	Apr/21/98
69	Responsible Div Approve	1.00 d	Apr/22/98	Apr/22/98
70	Budget Div Review	5.00 d	Apr/23/98	Apr/29/98
71	Pol Dir Reviews	2.00 d	Apr/30/98	May/01/98
72	Admin Proofs Regs	2.00 d	May/04/98	May/05/98
73	Director Approves	2.00 d	May/06/98	May/07/98
74	CS Mailed to Commenters	0.00 d	May/08/98	May/08/98
75	DMAS Director Adopts	0.00 d	May/15/98	May/15/98
76	File Final Regs w/Registrar	0.00 d	May/15/98	May/15/98
77	Final Regs to SEC, GOV & DPB	0.00 d	Jul/01/98	Jul/01/98
78	Publish Register	10.00 d	May/15/98	May/29/98
79	Final Review Period	22.00 d	Jun/01/98	Jun/30/98
80	Effective Date	0.00 d	Jul/01/98	Jul/01/98



Milestone Δ Summary ▬
Fixed Delay - - -