**Action Alert - 4.13.16**

**EXTREMELY URGENT ALERT!! Medicaid Consumer-Directed Services Change About to Occur**

ACT TODAY -- YOUR action could prevent people with disabilities in Virginia from losing the ability to schedule personal assistants when they need them to live independently in the community!

Do YOU, or a member of YOUR family, receive consumer-directed (CD) personal assistance, respite or companion services through Medicaid?

You MUST ACT TODAY to protect your ability to hire Medicaid CD assistants to work overtime, if that is mutually agreeable, and helps you to get the services you need to live in your own home and stay out of a nursing facility or other institution.

CONTACT YOUR STATE LEGISLATORS – Ask them to support Governor McAuliffe’s budget amendment that will restore authorization of 16 hours of overtime pay to the state budget, which was cut by the General Assembly when they approved their final version of the state budget in early March. The cut will prohibit you from using the same Medicaid CD assistant for more than 40 hours a week beginning July 1, 2016. The final opportunity to prevent this is now.

The Governor had included the overtime in his original budget, but legislators removed it in the final day of their regular legislative session. Responding to disability rights advocates from the Virginia Association of Centers for Independent Living (VACIL) and others, Governor McAuliffe has submitted a budget amendment that would restore the authorization of 16 hours of overtime payments. His budget amendment will be considered by the Virginia General Assembly at their Veto Session on April 20.

This budget action would not limit the number of hours that an individual can use each week for CD personal care, respite and companion supports. This is about the number of hours that the CD assistant can work. People with disabilities could hire multiple CD assistants. Hiring multiple CD assistants is not possible and/or not desirable in some situations.

The 40-hour cap on hours that a Medicaid-funded CD assistant could work would be for all hours (personal care, companion and respite) combined in a week.

Medicaid live-in CD assistants would not be impacted by this change, at this time. Also, if in the future it is determined that DMAS is a joint employer with the employer of record, CD assistants would be limited to 40 hours of Medicaid CD employment even if they are working for more than one individual.

We have a CHANCE to protect the ability of people to hire assistants they need, a solution that is essential given the dire shortage of personal assistants willing to work for the low wages offered to personal assistants through Virginia’s Medicaid program. This is especially important in areas like Northern Virginia where the cost of living is so high.

Moreover, the labor shortage is often even more severe in rural Virginia. The ability to hire someone is essential to providing people with disabilities living in those areas, and their families, the flexibility they need to ensure they can get the services needed.

Not allowing for any ability of a CD assistant to work more than 40 hours could put others at significant risk due to their unique support needs making it hard to find multiple assistants to train for these unique needs; weather emergencies in which one assistant has to stay longer because the second assistant cannot travel to the person’s home; and unexpected illnesses like the flu in which an adult with significant disabilities living on their own may temporarily need more extensive support to deal with symptoms.

YOU, YOUR FAMILY, and ALL disability rights advocates are urged to contact your State Delegate and State Senator and ask them to vote in favor of Governor McAuliffe’s budget amendment authorizing Medicaid CD assistants to be paid overtime up to 16 hours per week. Let them know why it is important that you have the flexibility to hire the same assistant for more than 40 hours per week. Explain to your Senator and Delegate how limiting hours that CD assistants can work will impact your Medicaid services and your life. Ask them to support the Governor’s budget amendment to allow up to 16 hours of overtime in fiscal year 2017 (Item 306). Meet with your Senator and Delegate this week to explain the impact. Even if you contacted your legislators earlier in the year, please contact them again.

Contact information for your Senator and Delegate is at http://whosmy.virginiageneralassembly.gov/

If you have media contacts, please reach out now and request they cover this issue before Monday, April 18. Letters to the editor would also be helpful.

For more information, please contact VACIL at mhollowell@endependence.org

Background on Consumer-Directed Overtime

The personal care services that thousands of people with disabilities use to avoid nursing facility and other institutional placement are set to be changed by the Virginia General Assembly. Unwilling to continue funding overtime wages required by federal Department of Labor regulations, state legislators voted to end overtime pay for Medicaid consumer-directed (CD) personal care assistants. A budget amendment from Governor McAuliffe would allow a limited number of overtime hours so these vital supports can continue.

History of Virginia Medicaid CD Overtime

1998 – Virginia Medicaid began paying for CD personal care services. Services are authorized based on the needs of people with disabilities and assistants worked the hours needed without consideration of overtime wages.

2013 – Federal Department of Labor (DOL) Regulations amended to require overtime pay for “companionship services” which include personal care, respite and companion services.

2014 & 2015 – Regulations challenged and ultimately upheld in court.

December 17, 2015 – Governor McAuliffe introduces the state budget for the fiscal year beginning July 1, 2016. The introduced budget would continue limited Medicaid CD overtime so that assistants could work up to 56 hours a week for the same individual (16 hours a week of overtime).

January 1, 2016 – As required by DOL, Commonwealth of Virginia began paying overtime for Medicaid CD assistants working more than 40 hours a week for the same individual.

March 11, 2016 –General Assembly votes to prohibit overtime wages for Medicaid CD assistants.

April 10, 2016 – Governor submits a budget amendment to allow Medicaid CD assistants to work up to 56 hours in a work week and pay 16 hours of overtime.

April 20, 2016 – Final vote on the state budget is scheduled.

Placing a limit on hours will result in a crisis for some people with disabilities who need their Medicaid CD assistants to work more than 40 hours in a work week. Examples include:

- People in rural areas whose assistants travel significant distances or who have few potential people to hire because of living in a rural area;

- People with unique support needs due to their physical disability or other disability needs, such as people with autism, making it hard to find multiple assistants to train for these unique needs;

- Weather emergencies in which one assistant has to work longer because the second assistant cannot travel to the person’s home; and

- Unexpected illnesses like the flu in which an adult with significant disabilities living on their own may temporarily need more extensive support to deal with vomiting or other symptoms.

The crisis that will be caused by limiting Medicaid CD assistants to 40 hours a week is very real for people with disabilities who need Medicaid CD supports to avoid placement in a nursing facility or other institution. For many people, relying on agency-directed personal care services is not an option either because personal care agencies do not have appropriate staff or the individual has already tried agency-directed services and the agency was not able to meet the individual’s needs.