

Public Comment Summary Regarding Intended Amendments for Virginia's Intellectual Disability, Developmental Disability and Day Supports Home and Community Based Waivers

Introduction and Background

The formal public comment period was initiated on Friday, January 29, 2016 and closed on Monday, February 29, 2016 at 5:00pm Eastern Standard Time (EST).

The entire waiver application amendments for each of the three waivers were open for public comment for 30 days, January 29, 2016 – February 29, 2016. Throughout the 30 day public comment period public notice was provided through the DMAS and DBHDS websites and stakeholder email notifications. On Sunday, February 7, 2016 a printed legal notice was placed in a large Virginia newspaper, the Richmond-Times Dispatch, a newspaper with statewide distribution and carried at Libraries throughout Virginia. Additional dissemination of the notice was achieved through other state agencies posting the notice, postings/announcements disseminated by advocacy groups and trade organizations and through list serves and social media.

The public notice provided the following:

- Name and address for submission of written and electronic comments
- A deadline for submission of comments
- The location to obtain paper and electronic versions of the waiver application.

Individuals and groups had the opportunity to submit comments in a variety of ways including via e-mail, US Mail, or by facsimile. The majority of the public comments were received via e-mail. Over 100 individuals or entities that provided feedback during the public comment period which encompassed a total of 327 comments.

The Commonwealth received comments from the following entities:

- Arc of Virginia
- Virginia Board for People with Disabilities
- VNPP
- VaAccess
- VACSB
- VACIL
- Wall Residences
- Fidura and Associates
- Hope House Foundation
- I/DD Committee, Fairfax-Falls Church CSB
- Peaceable Life Therapeutic Services, Inc.
- Community Engagement Advisory Group, Employment First Advisory Group
- Frontier Health VA
- Service Source Inc.

- Moms in Motion
- Positive Behavior Consulting, LLC
- VA Sponsored Residential Provider Group
- Snowflakes ABA
- Capital ABA,LLC
- Planning District 1 Behavioral Health Services
- Didlake
- MVLE
- Henrico Area MH & DS
- disability Law Center of VA (dLCV)
- Crossroads CSB
- Essential Family Services
- Virginia Academy of Nutrition and Dietetics
- Virginia Ability Alliance
- Family Sharing, Inc.
- Commonwealth Autism Services
- Essential Family
- Molina Healthcare
- disAbility Resource Center
- Virginia Association of Centers for Independent Living
- Individuals receiving waiver services
- Family members of individuals receiving services
- Individual service providers
- Other stakeholders, school personnel, nutritionist

Comments were sorted into a series of common broad categories or similar themes with a focus on those issues that would be incorporated into the waiver amendments. The resulting comments were summarized and organized into topical areas.

Comments directly related to the waiver amendments, specific services, service limitations, allowable activities, service definitions, and proposed additions to individual waivers were compiled, analyzed and discussed jointly by DMAS and DBHDS. Comments that were not directly related to the waiver amendments, but which referenced elements of the waiver redesign appear in a single category entitled “General.” Other submitted comments which did not relate to either the waiver redesign or the amendments were classified as “Out of Scope.” These areas will be targeted for further review and analysis.

There were a number of comments which demonstrated misunderstandings about the services or the construct of the waiver application. There were several references to errors or omissions in the amendments which were subsequently corrected. There were a few comments indicating that the amendments were difficult to read and understand in their entirety. The Commonwealth will develop informational materials and communications targeted to various stakeholders to help resolve the various misunderstandings and educate on the components of the waiver amendments.

Summary of Topic Areas Addressed

Service Specific:

- There were 3 comments recommending that information be disseminated to help distinguish between the **Private Duty and Skilled Nursing Services**. One noted the importance of clear language indicating that the RN can delegate nursing duties to family members and that language continue to provide for delegation of skilled nursing duties to the sponsor home/DSP. Another recommended modifying the language to indicate that staff need to have taken the 32 hour medication administration course through the Virginia Board of Nursing but not require specific in class time. One questioned whether reimbursement rates are comparable for RNs/LPNs.

Response: *DBHDS plans to disseminate information on all waiver services to the public and stakeholder. Nurse delegation under the waiver services will continue to follow the applicable laws regulating the service, in particular, the Nurse Practice Act. Proposed reimbursement rates are in line with the rate models recommended by the HSRI contractor. Final rates are approved by the General Assembly.*

- There were 2 comments on the **Community Guide Service**. Several questioned the qualifications (and training curricula) of service providers who would deliver the service to ensure they meet the same qualifications for health and safety as other providers. Others were opposed to the service being restricted to providers who do not deliver any other direct services.

Response: *Provider qualifications of the service are outlined in the amendments with training curricula to be developed. Federal regulations require that there be no direct conflict of interest in referrals to providers who deliver services. Implementation of the service has been delayed until 2017.*

- Two commenters expressed concern with the proposal to phase in new day and employment services by hours rather than “block” units at the time of the individuals’ annual ISP date, due to the anticipated complexity with having to manage dual systems.

Response: *DBHDS have given providers the option to change over to the new system to coincide with the July 1st implementation date.*

- There were 12 comments on **Crisis Services and Supports**. A number of commenters questioned whether the service can be provided or organized by a PBSF. One believed that the service was being removed from the waiver. Another believed that caps for this support are not consistent with needs when other types of intervention/support are not available in most areas.

Response: *Crisis Services are not being removed from the waiver; rather the two services have been adjusted and transformed into three distinct options for crisis supports. A person with PBSF credentials may also qualify as a QIDDP.*

- There were 6 comments on **Prevocational Services**. Commenters are requesting that the service continue to be available under the waivers or that a transition period be instituted to facilitate individuals being moved from these settings.

Response: *This service is not well supported in light of the CMS HCBS settings requirements and will be discontinued. DBHDS staff have over the past year and continue to work with Prevocational providers across the state to assist with the transition.*

- There were 3 comments on **Group Day Services** recommending that an allowable activity include individual tours with employers, such as exploring community job prospects through internships, volunteer work, etc.

Response: *This activity is allowable under the definition and will be included in educational and training materials as well as the waiver manual.*

- Three commenters noted that the amendments do not clarify that Behavior Consultation cannot be provided by a Case Manager.

Response: *Appendix D of the application states that the case manager may not be a direct service provider.*

- There were 3 comments on the **Environmental Modifications** Service. Two requested an increase in the \$5000 cap for Environmental Modifications. One requested that the service be available for individuals in sponsored residential services (SRS).

Response: *Funding is unavailable to support an increase in the \$5000 maximum for the service. This service is not available to individuals in SRS due to ADA regulations.*

- There were 2 comments on the **Assistive Technology Service**. Two requested that the service remain available receiving SRS. Another noted that the service doesn't account for equipment that may be used as a part of service delivery and monitoring in order to help individual live in least restrictive environment.

Response: *Assistive Technology continues to be available to individuals in the Sponsored Residential service. AT is used to enable individuals to live in the least restrictive environment.*

- There were 3 comments on **Non-Medical Transportation**. The majority want to expand the service beyond flat rate mileage reimbursement proposed. One suggested the need for higher rates for individuals needing specialized transportation. Other suggested requiring a valid driver's license from Virginia and completion of a criminal background check prior to delivering service, as well as insurance liability.

Response: *Implementation of the service has been delayed until 2017. DBHDS will reevaluate the components of the service prior to that time.*

- One commenter noted that a more clear distinction between the **Supported Living** model is needed to help determine which providers fall under the independent living or supported living model with the service offering access to 24 hour support to the majority of individuals supported.

Response: *DBHDS is developing guidance that will be included in waiver education and training materials, including waiver manuals. The department is currently using as guidance a provider operated setting with 24 hour emergency access.*

- One commenter recommended that for **In-Home Support Services**, emphasis should be placed on the shared responsibility for the participant when a Primary Caregiver exists to ensure services strictly "supplement" the care by unpaid care giver.

Response: *The definition of this service does include reference to supplementing primary care.*

- One commenter inquired about why **In-Home Supports** are identified as a "Statutory Service" under the FIS waiver and as "Other Service" under the CL Waiver. It was suggested that a back-up plan be required as is the case for Personal Assistance Services. It was suggested that clear, definitive guidance is needed on what is, "appropriate justification" and/or "exceptional instances" for 24-hr In-home Support Services.

Response: *The categories in which this service appears in the amendments are a function of the design of the waiver applications. Verbiage about back-up plan has been added. The final point above will be addressed in waiver education and training materials, including waiver manuals.*

- Two commenters recommended that **Transition Services** include the payment of 1st month's rent with community transition services.

Response: *This payment is not allowable under MFP federal policy.*

- Seventeen commenters recommended the restoration of rates for the Sponsored Residential Service (SRS). They believe that the service has parity with Group Homes and should include the same rate. Two recommended including SRS homes as providers of Agency-Directed Respite services. One requested clarification that the exceptional support rate is being extended for SRS through January 1, 2017 when the Commonwealth rolls in the new tier reimbursement system.

Response: *The Commonwealth is following the rate model that has been adopted for the state. The rate structure accommodates federal requirements for choice and community integration. The Commonwealth maintains that the closest model to the SRS is the host home vs. group home, which is a congregate model inclusive of shift based staffing. DBHDS does not have a license category for providers licensed as SRS to provide respite services. The Commonwealth is in the process of investigating extending the exceptional support rate for individuals in sponsored residential.*

- One commenter recommended the addition of nutritional services to the service array for the waivers.

Response: *Funding is unavailable to support the addition of new services.*

- One commenter inquired whether Personal Assistance can be used at home in tandem with EPSDT in the school?

Response: Personal assistance through a waiver can be used at home while EPSDT is being used at school.

- One commenter recommended stronger language in **Workplace Assistance Services** requiring individuals to work with a Job Coach/Employment Specialist prior to workplace supports being authorized.

Response: *It is determined that the language in the application is clear that Workplace Assistance follows and then works in tandem with a Supported Employment job coach. This will also be stressed in training materials and policy manual.*

- Two commenters recommend that DARS be eliminated as the agency establishing a provider as a vendor of supported employment services. One recommends removing specific language for group SE “through a recognized accrediting body” to allow for additional SE credentialing bodies. Another recommends changing the definition from minimum wage to commensurate wage for Group Supported Employment.

Response: *At this time DARS is the state agency responsible for assuring the credentials of SE vendors. Other stakeholders have expressed the desire to retain DARS in this role. The nationally accepted definition of supported employment includes wages at or above minimum wage.*

- One commenter noted that **Benefits Planning** section was too complicated and that the service be available under all three waivers. It should be DARS responsibility when funded by DARS and then available under the waiver when DARS closes the case. Also recommended was that the service definition be shortened and accompanied by a list of “Allowable Activities.” Further, the itemized amount, frequency and duration of the service terminology should be deleted and listed as “hourly based on the delivery of documents and/or outcomes accomplished according to a fee schedule.”

Response: *This service is to be included in all three DD waivers. The implementation of this service will be delayed until 2017. The Commonwealth will take the recommended changes under consideration.*

Rates and Billing

- One commenter recommended a higher Northern Virginia differential for reimbursement rates, specifically referencing the need for a larger differential (30% proposed) for the Sponsored Residential Service.

Response: *The General Assembly has proposed a 30% increase for providers in the Northern Virginia area.*

- One provider recommended that all services receive an additional increase beyond those proposed by the rate model.

Response: *Other than a few GA recommended exceptions, the Commonwealth is following the rate model that has been proposed for the state.*

- There were three comments suggesting that rates are not supported by the cost of the service and not sustainable to support the individual ratios required by the new waivers.

Response: *Other than a few GA recommended exceptions, the Commonwealth is following the rate model that has been proposed for the state.*

- There were three comments expressing concern with the restructuring of rates for day support services into three separate billing structures that would result in a complicated billing algorithm. Also expressed the was the desire for one Plan for Supports to reflect multiple day services.

Response: *Other than a few GA recommended exceptions, the Commonwealth is following the rate model that has been proposed for the state. DMAS expects one Plan for Supports for each separate service.*

Eligibility

- Four commenters recommended delaying implementation of the VIDES due to concerns with the validity of the tool. Some expressed concern about individuals currently on a waiver who may be determined to be ineligible using the new tool. One recommended the distribution of informational materials to individuals to assist in their understanding of the process and also asked who would be authorized to speak on behalf of the individual.

Response: *VIDES is based on the former Level of Functioning Survey (a 30 year old tool) that has been updated to current standards (e.g., person-centered language). The instrument has been piloted and found to produce virtually the same results. Individuals found ineligible for services or their guardians may appeal through DMAS.*

Case Management

- Two commenters advocated for the same pay rates for private case managers and those employed by the CSB. The Commonwealth was encouraged to consider setting a standard rate of reimbursement for private case managers to prevent perpetuation of potential organizational conflicts of interests. Others opposed the decision that private case managers may not provide other services in adherence of conflict free case management. One expressed concern with the overall integration and oversight of DD Case managers contracting with local CSBs.

Response: *DMAS has posed a question to CMS regarding the provision of Services Facilitation and Case Management by the same entity.*

- Three commenters advocated for services facilitators to be able to continue to provide case management services as is currently allowed. Another requested clarification of the frequency of the face to face visit expectation of the Service Facilitator.

Response: *Upon clarification from CMS, the prohibition against an agency providing both CM and SF has been removed from the applications. Further details about face to face expectations are in the current regulations and policy manuals and will be in the updated ones as well.*

Waiver Specific Recommendations

- Nine commenters requested that additional consumer directed service options be available overall and that consumer directed options be available in the **BI Waiver**. One expressed concern with the CD employee's limit of 40 hours per week.

Response: *The Commonwealth is unable to offer additional CD options at this time. Current CD options are unavailable under the BI Waiver which targets individuals with the lowest support needs. The General Assembly has proposed limiting a CD employee's hours to no more than 40 per week.*

- Two commenters requested that Workplace Assistance and Electronic Home-Based Services be added to the **BI waiver**.

Response: *Workplace Assistance is unavailable to individuals in the BI waiver as the waiver is design to support individuals with low support needs. Electronic Home-Based Supports is available in all three waivers.*

- Three commenters recommended including the Individual and Family/Caregiver Training service in all three waivers

Response: *All services are not available in all waivers but are tailored to individuals with specific support needs. IF/C Training is available in the FIS waiver, as that is the waiver geared mostly toward individuals living with their families.*

- Three commenters suggested that the current names for the waivers were not appropriate.

Response: *The feedback is duly noted.*

- One commenter asked if residential services would be available under the new **FIS waiver**.

Response: *Residential service options (group home, sponsored residential, and supported living) are unavailable in the FIS waiver which targets individuals who are living at home with family or in their own homes.*

- One commenter expressed concern that the **CL waiver** only provides segregated and congregate group living options and suggested that the full array of services would be beneficial to individuals being served through the **FIS waiver**.

Response: *The CL waiver offers the full array of services to individuals, with the exception of the Independent Living Service. In-Home Supports, Supported Living, and Shared Living are available. The FIS waiver provides access to In-Home, Shared Living and Supported Living services.*

General

- There were twelve comments requesting that providers licensed by VDH or the Virginia Board of Medicine not require an additional DBHDS license to provide Group Day, Group Supported Employment, In Home Supports, Supported Living, Crisis Stabilization, Therapeutic Consultation. Concern was expressed by one commenter that PBS Facilitators are not licensed by the Department of Health Professions and therefore there is no oversight of the profession. It was recommended that DBHDS or the VDHP develop a license for these providers.

Response: *Individuals licensed by the VDH or Board of Medicine alone do not necessarily have the infrastructure or meet other essential requirements to provide those services. PBSFs do receive oversight from the endorsing body, as well as DMAS.*

- One commenter suggested that for all consumer directed services, the requirement for an annual TB screening be revised to reflect compliance with VDH policies and requested that recipients be permitted to train their CD employee in the performance of minor procedures, if he or she would be able to perform such procedures, but cannot do so because of a physical disability. Also requested was that the service definitions for all CD services include the words “or unwilling” after the word “unable” in the clause, “If an individual is unable to direct his or her own services, an adult family member/caregiver may act on the behalf of the individual as the EOR.”

Response: *Changes to the TB screening requirement and the requested wording change were made. EORs are currently permitted to train attendants to perform tasks that an individual would typically do themselves but because of a disability they are unable to perform the tasks.*

- There were several comments requesting minor revisions to language.

Response: *DBHDS and DMAS will review and consider the revisions noted and make appropriate changes.*

- One commenter recommended that the term DD should be used exclusively in the amendments.

Response: *DBHDS and DMAS agree and will update the language in the amendments.*

- Two commenters inquired if AT&T Language Line services were accessible to people with IDD.

Response: *DMAS contracts with Language Line Solutions to provide over the phone interpretation service when communicating with DMAS or contracted entities. This service is available by phone to anyone needing language interpretation services in order to access or discuss Medicaid services and options. This service is accessed through the Medicaid help-line.*

- There were several comments requesting that details be added on waiting list priority, slot allocation, WSAC processes, slot capacity for moving between waivers, and the use of reserve slots.

Response: *This information will be included in the waiver regulations, policy manuals, and educational materials.*

- Two commenters recommended delaying implementation of the waivers for two years.

Response: *The Commonwealth does not believe that a two year delay in implementation is warranted or in the best interests of Virginians awaiting services. Further, implementation of the waiver redesign is a critical component to meeting the requirements of the DOJ settlement agreement and transforming the DD service system to include more choice and integrated services.*

- There were several comments on increasing capacity and provider development in the Commonwealth.

Response: *These activities are currently occurring and will continue.*

- One commenter expressed concern that the quality of the comments received will suffer because of the number of contradictions and errors contained in the applications.

Response: *The Commonwealth will review errors noted and make changes or corrections as appropriate.*

- One commenter expressed concerns with regard to challenges with implementing the waiver redesign, including communication to providers which results in delays in planning service delivery, data collection, quality management, billing, concerns with system readiness, workforce capacity, expected growth, and demand for services.

Response: *The Commonwealth is actively working on all these areas to meet the implementation deadline.*

- One commenter noted that EORs being supported at this level may require more management training than the limited 4 hour units per 6 months appropriated. There should not be a limit to facilitating successful direction of CD services through MT.

Response: *There were no changes made to the current limits of management training through services facilitation. Management training is intended to provide ad hoc support to EORs as needed that is above and beyond the initial employee management training that is provided at the initiation of services.*

- Several comments expressed support for the waiver amendments without qualification.

Response: *The Commonwealth is appreciative of the support and feedback.*

- One commenter suggested that DMAS/DBHDS revisit its Quality Improvement Process and insert objective third party data collection, as well as recommended the use of a separate appeals and grievance/complaint process.

Response: *The waivers' quality improvement process includes licensing site visits and citations, DMAS QMR visits and corrective action plans, Quality Service Reviews of provider records and provider/individual interviews by an independent contractor, along with case management supervisory review of records. Individuals, families, and providers also have access to the DMAS appeals and complaint resolution process.*

- There were four comments suggesting a need for improved communication to individuals and the public on the components of the three waivers.

Response: *DBHDS agrees that a comprehensive communication and education effort is needed and has developed a communication strategy with stakeholders that will be utilized to distribute information to the public. Informational materials have been updated and posted to the DBHDS website, notices have been distributed via multiple formats, and comprehensive trainings are currently underway for providers, case management, and agency staff. Family and individual stakeholder forums are also scheduled to be held across the state.*

- One commenter inquired why the average cost in the BI waiver of other Medicaid (state plan) services decrease from \$14,467 in Year 1 to \$9,721 in each of the succeeding four years of the waiver period and questions how this number was derived as it seems high for a relatively able target population who, on average, are likely to have less significant acute medical needs than participants in the other waivers.

Response: *This waiver was renewed on July 1, 2013 therefore the current state fiscal year (2016) correlates with year 3 of the waiver. D' is the estimated annual average per capita Medicaid cost for all other services provided to individuals in the waiver program.*

- One commenter inquired why the average per capita cost of IFS waiver services almost triple between Year 3 (\$11,442) and Year 4 (\$30,155)?

Response: *This waiver was renewed on July 1, 2013 and the current state fiscal year (2016) corresponds with year 3 of the waiver.*

- One commenter inquired whether DMAS/DBHDS plan to submit follow-up amendments to revise the unduplicated number of waiver participants in Appendix J (all applications) if the General Assembly acts to increase Waiver slots.

Response: *Amendments will be submitted to increase waiver slots consistent with budget appropriations.*

- One commenter inquired if the utilization and expenditure estimates in Appendix J (all applications) were intended to reflect the current approved waiver slots, plus the number of new slots required to meet the terms of the Settlement Agreement, or are they intended to reflect DMAS/DBHDS total commitment to adding new waiver slots over the next 5 years?

Response: *Waiver slots in amendments are reflective of budget appropriations at the time the amendments were drafted. Upon General Assembly approval of new slots in subsequent years, new amendments will be submitted.*

The following issues are identified by the Commonwealth for inclusion in the waiver amendments:

- There were thirteen comments recommending that the amendments reflect a combined service limit of 66 hours per week for all day/employment services as opposed to the 780 hours per year in the application.

Response: *The amendments will be so updated, as the 780 language reflected a previous standard and was a placeholder for language proposed by an existing stakeholder group.*

- There were two comments recommending that the Community Engagement Service allow "Development and Planning of the types and specific details of an activity with or without individual present, to incorporate no more than 10% of authorized hours.

Response: *The amendments will be updated to reflect time that the provider would spend planning the chosen activities for the individual (i.e., reviewing the internet or the newspaper for locations, dates and times for activities of the individual's preference).*

- There were four comments recommending the elimination of the requirement for a psychological evaluation to determine eligibility.

Response: *The amendments will be updated to note that eligibility will not be limited to a psychological evaluation to determine DD criteria.*

- There were three comments recommending the inclusion in Group Day Services of the expectation that the provider coordinate any behavioral therapies listed in the person centered plan with their services.

Response: *The amendments will be updated to add this language.*

- One commenter submitted a correction to a VIDES related performance measure regarding the number of criteria to be met.

Response: *The amendments will be corrected.*

- One commenter recommended that the Restraints and Restrictive Interventions be updated to reflect changes within the Human Rights regulations.

Response: *The amendments will be corrected.*

- Two commenters recommended that DBHDS include a representative from the VA Sponsored Residential Provider Group in stakeholders meetings.

Response: *The Commonwealth is happy to include this named stakeholder group in future stakeholder meetings and forums.*

- Two commenters requested that the supported employment waiver definition be updated to reflect the most recent definition from the Employment First Advisory Group.

Response: *The amendments will be updated.*

- Two commenters indicated the presence of varying terminology in the amendments used to reflect the same concept.

Response: *The Commonwealth will review the terminology referenced and update the amendments to reflect consistent terms.*

Out of Scope

- There were 16 comments determined to be out of scope for the waiver amendments. These primarily dealt with the HCBS Settings Regulation, additional REACH services and homes, and the CSB performance contract.

Response: *The Commonwealth will keep the comments under advisement for consideration of the issues by the appropriate authority.*