

# **DBHDS**

Virginia Department of  
**Behavioral Health and  
Developmental Services**

## **Virginia's Choice Protocol:**

### **A Protocol for Offering and Resolving Issues Regarding Choice in Virginia's Intellectual Disability & Day Support Home and Community Based Waivers**

*Support coordinators/case managers are strongly urged to share this document (either via hard copy or electronic means) with each individual, legal guardian, authorized representative, involved family members, as well as providers prior to the person-centered planning meeting.*

## Introduction

The rights of Medicaid-eligible persons to choose the provider of services they receive under Virginia’s Medicaid State Plan, as well as Home and Community Based Waivers, are established in Section 1902 of the Social Security Act, and are therefore prerequisites to receiving federal Medicaid reimbursement.<sup>1</sup> Furthermore, the rights of all of Virginia’s citizens with intellectual disability to access services of their choosing that reflect their need for community support is a value that is held by the professional service community.

This protocol has been developed to offer guidelines to Community Services Boards/Behavioral Health Authorities (CSBs/BHAs) and other providers of support services who struggle with issues of limited resources and individual needs, while adhering to the principles and mandate for providing and ensuring “choice.” Service providers for a particular individual assure that they will work collaboratively in offering supports and will, at all times, mutually respect the individual’s choice. When an individual or authorized representative (AR), if appropriate, expresses dissatisfaction with a current provider or interest in other service options, person-centered planning tools should be used to identify and document the reasons that change is desired and how best to support the individual and AR, if appropriate, in the decision and any subsequent provider transition.

In the interest of brevity, whenever an individual has a designated legal guardian, all references to “the individual” should be interpreted as “the individual and legal guardian.”

The term “providers” in this document will refer to public, private and contracted providers of support services operating with Intellectual Disability or Day Support (ID or DS) Waiver funds.

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<sup>1</sup> **Social Security Act**

SEC. 1902. [42 U.S.C. 1396a] (a) A State plan for medical assistance must—  
(23) Provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1915(b)(1)), a Medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1905(a)(4)(C), except as provided in subsection (g), in section 1915, and in section 1932(a), except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan.

## **I. Methodology for Determining the Available Providers for a Given Area**

- A. CSBs/BHAs should access the list of DBHDS-licensed providers available on the DBHDS website (<http://www.dbhds.virginia.gov/LPSS/LPSS.aspx>). Through its search function it is possible to locate providers by region, type of service, type of disability(ies) served, etc. In addition, providers (including some non-DBHDS-licensed providers such as CD Services Facilitation, Durable Medical Equipment, etc.) can be located through the DMAS website ([http://www.dmas.virginia.gov/provider\\_search.ASP](http://www.dmas.virginia.gov/provider_search.ASP)).
- B. It is strongly recommended that providers notify the CSBs/BHAs, in whose catchment areas they wish to provide services, of their existence and availability. This should be done through a letter of introduction, and include a list of services, regions served and the contact person for information or referral.
- C. It is strongly recommended that each CSB/BHA maintain a current notebook of letters of introduction from providers available to provide services in their area. This can be perused by individuals and their ARs, as appropriate.

## **II. Methodology of Offering Options to Individuals and Families**

- A. Choice of providers is always an option and can be exercised at any time by individuals once they have obtained a Medicaid Waiver slot.
- B. The CSB/BHA is responsible for reviewing with the individual and AR, as appropriate, the list of available providers
  - 1) at the initiation of Waiver services;
  - 2) whenever requested thereafter for any reason by the individual and AR, as appropriate;
  - 3) if the support coordinator/case manager has a documented reason to believe that the individual may benefit from offering choice of providers (e.g., if the support coordinator/case manager, in consultation with the individual and AR, as appropriate, determines that the individual's person-centered plan outcomes are consistently not being achieved) ;  
or
  - 4) if the individual and AR, as appropriate, expresses dissatisfaction with current services (NOTE: the annual Person-Centered Planning meeting should always include a discussion of satisfaction with supports & services received).

- C. Neither the support coordinator/case manager nor any other provider representative will offer another provider as an alternative choice to an individual already receiving services from a provider of the same type, except in one of the circumstances listed in “B” above.
- D. Support coordinators/case managers will provide the support needed by the individual and AR, as appropriate, to contact the provider(s) of interest. All provider(s) of interest will be contacted or reviewed with the individual and AR, as appropriate.
- E. Documentation of individual choice of provider(s) will be noted in the support coordination/case management record via the “Virginia Home and Community Based Waiver Choice of Providers” form (DMAS-460).
- F. Support coordinators/case managers will provide factual information in regard to service providers, including the specific services offered and not offered by each provider, and will provide the objective guidance necessary for each individual and AR, as appropriate, to make an informed choice.
- G. All providers must inform the support coordinator/case manager and legal guardian **prior to** a change in the individual’s service location, so that services can be monitored and provider options offered as appropriate (e.g., when a sponsor chooses to leave their licensed sponsored residential provider agency and affiliate with another agency, that sponsor does not have the option of “choosing” to continue to support the individual(s) in that home; however, the individual(s) may choose to remain with their known sponsor by changing providers at this juncture).

### **III. Resolving Health and Safety Risk Situations**

- A. In addition to honoring individuals’ and ARs’ rights to access their own records (as set out in 12VAC35-115-90), all providers of ID or DS Waiver services must provide reasonable access to support coordinators/case managers working with individuals receiving their services, including access to documentation and the physical premises where services are provided.
- B. Should the support coordinator/case manager or other involved person (e.g., family member, guardian, AR) have concerns regarding the capacity of a provider to support the health and safety needs of current or prospective individuals, based on known or observable circumstances, the necessary actions to be taken (per Chapter IV of the “MR/ID Community Services Manual”) include:

- 1) "Requesting a written response from the provider;
- 2) Reporting the information to the appropriate licensing, certifying, or approving agency;
- 3) Reporting the information to DBHDS or DMAS;
- 4) Informing the individual and AR, as appropriate, of other providers of the service in question;
- 5) As a last resort, after all other options have been exhausted, informing the individual and AR, as appropriate, that the individual's eligibility for Waiver-funded services may be in jeopardy should he or she choose to continue receiving services from a provider who cannot ensure health and safety or other requirements; and
- 6) Any time abuse, neglect, or exploitation of an individual is suspected, the support coordinator/case manager, as a mandated reporter, is required to inform APS or CPS at DSS, as appropriate, and DBHDS."

C. The Office of Developmental Services (ODS) may respond to reports about a deficient provider in one or more of the following ways:

- 1) Provide technical assistance to the provider in methods to improve their programming standards,
- 2) Contact the licensing or credentialing agency regarding apparent violations that compromise the licensing status, or
- 3) Inform DMAS that a program does not appear to be operating in accordance with the Medicaid provider agreement.

#### **IV. Individual Satisfaction Issues Resulting in Request to Change Provider**

A. The support coordinator/case manager is responsible for soliciting quarterly feedback from the individual on his or her satisfaction with the services being received. Satisfaction is viewed in the context of what is important **to** the individual and what is important **for** the individual. The most recent Personal Profile developed by the team should be reviewed. If the individual is expressing something that is not captured by the Profile, a new Profile should be completed with input from all of the team. If the individual has communication challenges, the team should observe and note behavior and other indicators that demonstrate the individual's satisfaction or dissatisfaction with services.

- B. The individual, AR, as appropriate, providers and others should communicate issues of dissatisfaction with services to the support coordinator/case manager at any time, without waiting for the quarterly person-centered review. All necessary support will be provided by the support coordinator/case manager directly to the individual to do so. Again, satisfaction is viewed in the context of what is important **to** the individual and what is important **for** the individual. The most recent Personal Profile developed by the team should be reviewed. If the individual is expressing something that is not captured by the Profile, a new Profile should be completed with input from all of the team.
- C. Providers have the responsibility for notifying the support coordinator/case manager and legal guardian if the individual expresses dissatisfaction directly or if dissatisfaction with the services is suspected through the individual's behavior or by report from significant others.
- D. If the individual and AR, as appropriate, expresses dissatisfaction, the CSB/BHA support coordination/case management system must have a mechanism that addresses this dissatisfaction with the provider. At a minimum, the support coordinator/case manager must:
1. Discuss with the individual and AR, as appropriate, ways to resolve issues and concerns to promote stability and satisfaction in the individual's life, while focusing on the preferences and interests of the individual. This should be accomplished through the use of person-centered tools and practices, or peer advocacy and should be reviewed in the context of what is important **to** the individual and what is important **for** the individual.
  2. Coordinate a meeting with all relevant parties to attempt to resolve the issues.
  3. If the potential for conflict of interest exists among those supporting the individual or the individual's choice is unclear, then a neutral facilitator, agreed to by all parties including the individual, will be called in to attempt resolution. This also may be accomplished using person-centered tools and peer advocacy.
- E. If concerns cannot be satisfactorily resolved within the individual's current setting, the support coordinator/case manager will ensure that the current and prospective providers, the individual and AR, as appropriate, allow adequate time for a smooth and reasonable transition period and process in order to accomplish a successful change in provider and/or service, ensure continuity of support and accommodate the unique needs of the individual as documented in the person-centered ISP. The responsibilities of each provider will be outlined and agreed upon in a transition meeting

to be held sufficiently in advance of the planned transition (at least ten business days prior to the transition is recommended, unless there are serious health and safety concerns).

- F. Public, private and contracted providers have the option at any time to contact ODS through their regional Community Resource Consultant (CRC) to obtain guidance and consultation in methods to improve programming and/or address an individual's and AR's, as appropriate, dissatisfaction with services. It is within the scope of the CRC's responsibility to provide objective, professional assistance directed toward quality improvement, as opposed to issuing, or causing to be issued, any penalties for inappropriate operation of the program, unless violations are of such a serious nature as to compromise the health and safety of individuals or appear fraudulent.

## **V. Methodology for Assuring Choice**

- A. The support coordinator/case manager will maintain the Choice of Providers form (DMAS-460) in the support coordination/case management record to document that choice of providers has been offered to the individual and AR, as appropriate, as specified in Section II.
- B. Should any individual, AR, as appropriate, or provider express that provider choice has not been adequately offered, information has been biased or incorrect, or that the individual and AR, as appropriate, has not been encouraged to participate in the decision making process, it may be that a violation of the "Participation in Decision Making and Consent" section of the DBHDS Human Rights regulations (12 VAC 35-115-70A) has occurred. The individual, AR, as appropriate, or provider may:
  - 1. Utilize the complaint resolution process developed by the CSB/BHA; or
  - 2. Utilize the Human Rights complaint resolution process (see the "Complaint Resolution, Hearing, and Appeal Procedures" section (12VAC35-115-150) of the DBHDS Human Rights regulations); or
  - 3. File a complaint with DBHDS Office of Licensing, DBHDS Office of Developmental Services or DMAS. The recipient of the complaint will conduct an investigation and take appropriate action.

All necessary support must be provided to the individual and AR, as appropriate, to do so.