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TO: DDWaiver@dmas.virginia.gov  
Department of Medical Assistance Services

FROM: Teri Morgan

RE: Comment on Virginia's Amendment Applications for its §1915(c) Home- and Community-Based Waivers for Individuals with Developmental Disabilities—Community Living, Family and Individual Supports, and Commonwealth Coordinated Care Plus Waivers

I am writing to provide comments on behalf of the Virginia Board for People with Disabilities (the Board) regarding Virginia's *Request for an Amendment to a §1915(c) Home and Community-Based Services Waiver: Community Living (CL), Family and Individual Supports (FIS) and Commonwealth Coordinated Care Plus (CCC+) waivers*. The Board appreciates the opportunity to provide input.

The policy change to allow legally responsible individuals (LRIs) to provide personal assistance services recognizes the valuable role of family caregivers in keeping families together and stable, leading to better overall health and well-being of families, including spouses, and children. The Board recognizes the efforts being made to determine suitable guidelines that allow for this policy change. The Board offers the following comments and recommendations to improve the amendment applications for the CL, FIS, and CCC+ waivers.

The Board's comments take into account a critical reality that significantly affects the delivery of home and community-based services, the direct support workforce crisis. This crisis has been a growing concern for more than a decade and is anticipated to persist well into the next decade. The crisis has reached a point where it hampers access to services and jeopardizes the quality of services.

Certain requirements placed on the delivery of consumer-directed (CD) services by an LRI create barriers that impede access to these services. Additionally, the high turnover rate of agency-directed service professionals is an undeniable reality that must be acknowledged and taken into consideration when establishing policies for CD services. There is a pressing need for a shift in our understanding of how the Home- and Community-Based Services system can and should proactively support families, including spouses, enabling them to become stable, capable, and empowered partners in the delivery of CD services.

### **Appendix C: Participant Services**

1. *Reimbursement may be made to legally responsible individuals for up to 40 hours per week.*

While we acknowledge that CMS requires a limit to the number of hours of services a LRI can provide, **the Board recommends a 56-hour limit**. The proposed 40-hour limit does not consider the extraordinary care needs that some individuals may have, which exceed 40 hours per week. In addition, and recognizing the workforce concerns mentioned above, the ability to hire consistent and reliable attendants for hours beyond the 40-hour limit is challenging and, in some instances, not possible.

2. *The person acting as the Employer of Record (EOR) must reside in the individual's local community within a 50-mile radius.*

This requirement could create a hardship for some families, especially for military families. For some individuals, a trusted family member may not live in the same community. In such cases, those individuals would be compelled to seek a non-family member to serve as the EOR. This would require the EOR to be familiar with highly personal information. Many individuals and families are not comfortable sharing what can be very complicated protected health information with others outside of family members. **DMAS should consider creating an exception to this requirement in specific circumstances. This exception would allow for flexibility and recognize situations where having an EOR located more than 50 miles away is the most suitable and appropriate arrangement for the individual's needs.**

3. *The legally responsible individual must document all tasks for each shift on DMAS-authorized forms and submit all work shift entries through the fiscal/employer agent's Electronic Visit Verification method.*

DMAS should extend the same exemption from Electronic Visit Verification (EVV) requirements to legally responsible individuals (LRIs) as it does to live-in caregivers. The requirement that LRIs use EVV imposes an overly rigid medical model into a family's life on a daily basis. This expectation of parents or spouses to constantly clock in and out throughout the day disrupts natural and normal interactions, which are crucial for fostering well-being and building trusted family relationships. It is neither practical nor

realistic to expect a parent or spouse to clock in and out multiple times a day. In addition, the emotional well-being of the person receiving services will likely be impacted by the perception that their needs are a burden and intrusion into everyday life. There are numerous states that exempt live-in caregivers, including LRIs, from EVV including Colorado, New Jersey and Rhode Island. **The Board recommends that LRIs be exempted from the requirement to use EVV.**

### **Items Not Included in the Amendment Applications**

In addition to the requirements included in the amendment applications, the Board recommends consideration of the items below to assist in ensuring an individual is receiving needed services.

1. **Create a standardized assessment tool that distinguishes ordinary care from extraordinary care and determine the amount of extraordinary care service required to meet those needs.** Taking a comprehensive approach to documenting extraordinary care needs will help to ensure that an individual is receiving the appropriate number of hours.
2. **Require the completion of the DMAS 95B and an attestation that the EOR understands and agrees to fulfill the responsibilities of EOR.**
3. **Require an enhanced annual planning meeting before a person turns 18.** This proactive measure helps ensure that LRIs are not solely relied upon as paid providers, especially when the individual gains access to other community-based services outside the home.