



**COMMONWEALTH of VIRGINIA**  
***Virginia Board for People with Disabilities***

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James W. Stewart, III  
Department of Behavioral Healthcare and Developmental Services  
13<sup>th</sup> Floor, Jefferson Bldg.  
1220 Bank Street  
Richmond, Virginia 23219

Re: Protocol for Resolving Issues Regarding Choice in Virginia's Intellectual Disability and Day Support Home and Community-Based waivers

Dear Jim:

The Virginia Board for People with Disabilities (the Board) appreciates this opportunity to provide comment on the revised Choice Protocol. We continue to support your department's efforts to increase and ensure person-centered practices and choice. We would like to offer the following comments and recommendations for your consideration. Suggested new language is italicized.

I. Methodology for Determining Available Providers for a Given Area. No changes recommended.

II. Methodology of Offering Options to Individuals/Families

The first bullet point in this section denotes that "Choice of Providers is always an option and can be exercised at any time by individuals once they have obtained a Medicaid Waiver slot." We recommend a second bullet point that ensures that individuals are reminded of this choice at appropriate intervals. We suggest adding the following language which would become bullet point #2.

*The support coordinator/case manager shall inform the individual/authorized representative of their right to choice of providers at every annual review.*

With respect to the current 2<sup>nd</sup> bullet on Page 2 of 6 regarding CSB/BHA responsibility for reviewing with the individual/authorized representative the list of available providers, the Board believes that outcome of services and supports should be considered when assessing whether an individual may wish to change providers. We recommend the following addition to (3):

(3) if the support coordinator/case manager has reason to believe that the individual may benefit from offering choices provides, *including an assessment by the support coordinator/case in consultation with the individual, guardian, or authorized representative, that service outcomes have not met the goals on the individual's person-centered Individual Support Plan.*

We recommend the addition of the word *annually* to the 5<sup>th</sup> Bullet point in Section II, as follows:

Documentation of individual choice of provider(s) will be noted *annually* in the support coordination/case management record via the "Virginia Home and Community Based Wavier Choice of Providers form (DMAS-460).

We recommend that the language be reworked for the current final bullet point on Page 2 of 6. The language refers to a "physical move"; however, the implementation of choice applies to all services, not just residential services. We agree with the concept that the support coordinator/case manager should be informed of any changes in services, including location, but this requirement should go beyond physical location.

### III. Resolving Health and Safety Risk Situations

With respect to the 2<sup>nd</sup> bullet on page 3 of 6, we have several recommendations. First, this bullet denotes actions that "should" be taken should "known or observable deficiencies" in health and safety be identified. The term "deficiencies" is specific to ICF-MR certification. The use of this term may be confusing. Adoption of the term "violation" would appear to be more consistent with DBHDS' provider licensure regulations. If a case manager observes a health or safety "deficiency" then he or she has an obligation to report it. Language in this section regarding actions to be taken should be consistent with licensure and professional reporting requirements. If the term deficiency is meant to be construed broadly, then clarification is needed in this section.

With respect to # (5) the 2<sup>nd</sup> bullet, it is unclear why the individual would be deemed ineligible for services if he/she chooses to continue receiving services from a provider who cannot ensure health, safety or other requirements. The provider's inadequacy does not affect the individual's eligibility for services. Rather, DBHDS should take appropriate action against the provider that is not compliant with health, safety or other requirements.

We further recommend with respect to # (5) that this paragraph be divided into two segments and that a # (6) be developed which addresses the critical requirement to inform Child or Adult Protective Services and DBHDS of suspected abuse, neglect, or exploitation. This item is too important to be part of # (5.)

With respect to the 3<sup>rd</sup> bullet on page 3 of 6, the comment above regarding the use of “deficient” applies here as well.

Regarding this same bullet (#3), we suggest modifying the language as follows since it is our understanding that DMAS has the ultimate authority/responsibility to make the determination of whether a provider is operating in accordance with the Medicaid provider agreement.

Inform DMAS that program *does not appear to be* operating in accordance with the Medicaid provider agreement.

#### IV. Individual Satisfaction Issues Resulting in Requests to Change Providers

We recommend language changes that simplify the first bullet point on page 4 of 6 as follows:

*The support coordinator/case manager is responsible for soliciting the quarterly feedback from the individual on his or her satisfaction with the services being received. To obtain this feedback, the support coordinator/case manager should consider observations by family members, guardians, authorized representatives and others. If the individual has communication challenges, the support coordinator/case manager should observe behavior and other indicators that demonstrate the individual's satisfaction or dissatisfaction with services.*

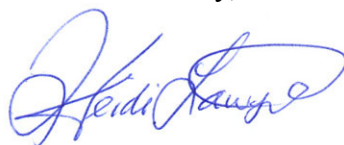
Regarding the 2<sup>nd</sup> bullet on page 4 of 6, it is unclear whether this protocol will be given to individuals, guardians, and authorized representatives. If it will be, then there should be a statement in the protocol which sets forth a requirement to provide a copy of the protocol to individuals, guardians, and authorized representatives. If the protocol is not to be so distributed, then we recommend removal of this bullet, since it then is unnecessary.

Regarding the 5<sup>th</sup> (and final) bullet on page 4 of 6, we recommend changing the word “move.” As noted earlier, this protocol applies to all services, not just residential services—the word “move” implies a physical move to a new location. As the department progresses towards its goal of separating housing from services, the likelihood of a provider or service changes without a physical change in residence will increase. We recommend the following language:

....to allow for a reasonable transition period and process in order to accomplish a successful ~~move~~ change in provider and/or service, ensure continuity of support, ....

#### V. Methodology for Assuring Choice. No changes are recommended.

Sincerely,



Heidi Lawyer