March 25, 2021

TO: Emily McClellan, Regulatory Supervisor

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Department of Medical Assistance Services

FROM: Teri Morgan

RE: Comment on Final 12VAC30-120, Waiver Services/12VAC30-122, Community Waiver Services for Individuals with Developmental Disabilities (adding 12 VAC 30-122-10 through 12VAC30-122-570).

I am writing to provide comments on behalf of the Virginia Board for People with Disabilities (the Board) regarding Virginia’s Developmental Disabilities waiver service regulations. The Board appreciates the opportunity to provide input on the Final regulations.

The Board offers the following recommendations to improve and clarify the DD Waiver regulations, organized by regulatory citation. The comments focus on 1) Instances in which the [Town Hall Regulatory Background Document: Appendix A](https://townhall.virginia.gov/L/GetFile.cfm?File=64\4500\8631\AgencyStatement_DMAS_8631_v8.pdf) states that the change/edit was made but the regulations don't reflect the change, 2) Identified errors in the regulations, and 3) Comments on the service Peer Mentor Supports.

**12VAC30-122-20. Definitions**

1. **Service Authorization**. **The Board recommends deleting the word “medically.”**While DD waiver services are all Medicaid-funded services, not all services authorized or funded under the waiver are medical in nature, e.g., ordered by a physician (e.g., employment, community engagement, etc.). Services are developed in accordance with the person-centered plan.

**Comment**: Response indicates change was made, but the regulations do not reflect the change.

**12VAC30-122-120 Provider Requirements**

1. **Subdivision A 5: The Board recommends removing the term “medically necessary” since the key to the plan is to provide person-centered services.**The provision would begin as follows:**“**Provide ~~medically~~necessary services and supplies for individuals in accordance with the ISP….”

**Comment**: Response indicates change was made, but the regulations do not reflect the change.

**12VAC30-122-150. Requirements for consumer-directed model of service delivery**

1. **Subdivision A 2a: The Board recommends modifying the second sentence of this subdivision to state, “If an individual is unable or unwilling to direct his own care or is younger than 18 years of age, he may designate another person older than 18 years of age to serve as the employer of record (EOR) on his behalf.”**Individuals who are capable of, but unwilling to, direct their own care should also be allowed to designate an EOR if desired.

**Comment**: Response indicates change was made, but the regulations do not reflect the change.

**12VAC30-122-200 Supports Intensity Scale requirements; Virginia Supplemental Questions; levels of supports; support packages**

1. **Subsection D: The Board recommends striking this subsection, which is a reserved section intended to explain the establishment of supports packages as a profile of the mix and extent of services anticipated to be needed by individuals with similar levels, needs, and abilities**. In light of 2019 General Assembly budget language which prohibits the implementation of supports package unless specifically authorized by the General Assembly, this section is not necessary.

**Comment**: Response indicates change was made, but the regulations do not reflect the change.

**12VAC30-122-400-Group and Individual Supported Employment**

1. **Subdivision C 4: The Board recommends striking the word “service” after employment, and striking “in combination with other day service or residential service” and revising to “concurrently with other waiver services for purposes of job discovery.”**The sentence would read as follows: “For time limited and service authorized periods (not to exceed 24 hours) individual supported employment ~~service~~ may be provided ~~in combination with~~ concurrently with day service or residential services for purposes of job discovery.” This revision helps with clarity.

**Comment:** Response indicates Edits were made, but change is not reflected in regulations.

**12VAC 122-500 Service facilitation service**

1. **Subdivisions B 3, B 4, and B 8: The Board recommends changes that would ensure that these subdivisions, which address face-to-face meetings between the individual and the service facilitator, be consistent with one another.** Subdivision B 3 states that face-to-face meetings shall occur between the service facilitator and the individual at least every six months. However, Subdivisions B 4 and B 8 refer to quarterly routine visits. The Board recommends every six months per Subdivision B 3, unless the individual requires or requests more frequent contact.

**Comment:** Response indicates Edits were made, but change is not reflected in regulations.

**12VAC30-122-90 Waiting List**

1. **12VAC30-122-90 Waiting list; criteria; slot assignment; emergency access; reserve slots.**E.3. 3. ] The individual who has the highest need as designated by the committee shall be recommended for the available waiver slot. DBHDS shall make the final determination for slot assignment [and to the most appropriate waiver to address the assessed needs of the individual. *FIS slots will be offered unless the individual demonstrates an immediate need for sponsored residential, group home residential, or support living which are only offered in the CL waiver ].*

**Comment**: Supported living is available in the FIS waiver.

**12VAC30-122-120 Provider Requirements**

1. **12VAC30-122-120 Provider requirements** [ ~~8.~~ 10. ] Submit reimbursement claims to DMAS for the provision of *covered services and supplies*for individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by the DMAS payment methodology from the individual's authorization date for that waiver service.

**Comment:** Should read services and supports.

**12VAC30-122-450 Peer support service**

1. **Subdivision D 2:** During the comment period for the proposed regulations, this section was reserved, for this reason, comment has been taken on this service.  
     
   **The Board recommends allowing this service to be provided virtually.** Requiring this service be “provided face-to-face” is unnecessarily limiting. During the past year, we've learned a lot about the benefits of virtual and tele-health options that people with disabilities have experienced. Allowing a virtual option would also mitigate barriers such as transportation and better support statewide availability.

**The Board recommends broadening the qualifications for a peer mentor to include competitive integrated employment, or demonstrated leadership abilities and activities.** A peer mentor could be a person who chooses to live with their family, is competitively employed and actively involved in the community with a robust social life.  Requiring a peer mentor to have "Lived independently in the community for one year" is overly restrictive. The Board recommends modifying as follows: “Peer mentor supports shall be provided by an individual with a developmental disability who has lived independently in the community for at least one year, or has been competively employed for at least one year, or has been in a leadership role in a community or other organization demonstrating self-advocacy and leadership skills and is or has been a recipient of services, including to publicly-funded housing, Medicaid waiver services, work incentives, and supported employment.”

The Board looks forwarded to continuing to work with DMAS, DBHDS, and other stakeholders on the HCBS services system. Thank you for the opportunity to provide input.