



**Advisory Council to  
The Division of Developmental Disabilities**

May 16, 2019  
10 a.m. – 12 p.m.  
1056 Governor's Avenue  
Dover, DE

**Council Members:**

Terri Hancharick, Chair  
Stan Trier  
Tom Rust  
Tim Brooks  
Gail Womble

**Staff Members:**

Susan Pereira, via teleconference  
Marie Nonnenmacher, Director  
Marissa Catalon, Deputy Director  
Terry Macy, Director of Community Services  
Kamin Giglio, Assistant Director of Community Services, Policy & Planning  
James Dickinson, Director of Service Integrity & Enhancement  
Katie Howe, Director of Program Integrity  
Darlene Sturgeon, Chief of Administration  
Vicky Gordy, minutes

**Guests Present:**

Suzanne Eaton-Ryan, The Arc of Delaware

**Review of Previous Meeting Minutes**

Notes from retreat not available at time of meeting.

**Meeting Minutes**

**Census**

Council received the DDDS March 2019 and Fiscal Year 2019 census information. Census “Out of state placement” data is incorrect due to counting people that live at Chesapeake Care Resources, located in Maryland. If provider operates in a contiguous area and complies with Delaware provider requirements, DDDS counts as in-state provider (adoption of Maryland rules is not required). To date, DDDS has three people living out of state.

The education system has a structure that supplies optional programs (most out of state) for students that cannot be educated in home district. Generally, student stays at program until reaching 21 years old. Once person is 21, education system stops funding. If person has an intellectual disability, DDDS has continued to fund out of state location. DDDS believes a better strategy is to bring person back to Delaware to be closer to family. In some cases, it is an easy transition, other transitions struggle to find provider to meet their needs. DDDS ultimate goal is to be able to meet needs in Delaware via in-state programs so people can be educated in their home district and a seamless transition to IDD state services once person becomes an adult.

The Waiver renewal added a new service: “medical residential habilitation” service. This service enables residential providers to deliver service as part of package of services for complex medical needs. DDDS hopes that adding this service will provide more options than nursing homes/Stockley Center for people that have complex medical needs.

The number of people in the emergency/high-risk category increased significantly during FY19. DDDS believes the increased supports individuals receive from targeted case management may be why this has occurred. Columbus Community Navigators are contacting people on a monthly basis and learning more about the family dynamics; therefore, more accurate data is received that may increase number in this category. If discovery of other reasons for increase, Council would like to readdress at July meeting.

Council member requested budget information for DDDS as a whole. DDDS state budget is approximately 62 million dollars; of that, 17 million funds Stockley Center, approximately 30 million is dedicated for purchase of community services, and the remaining 15 million supports administrative functions. DDDS Medicaid budget spends 150 million dollars total on Waiver services, 80 million is federal funds and 70 million is state funded via Division of Medicaid & Medical Assistance (DMMA). The ACIST Program, Pathways to Employment, State Plan Rehabilitation together cost approximately 17 million. All together DDDS spends over 200 million dollars on a combination of services and the administration of those services. DDDS administers a Home and Community Based Waiver, State Plan Home and Community Based Services, Health Home program that just received federal approval, day services under the State Plan Rehabilitation option. They all have different rules. Currently, DDDS is renewing the DDDS LifeSpan Waiver and the Pathways to Employment Program. Maintaining Medicaid programs requires an abundance of work to include completing renewal applications, financial reporting, quality reporting, etc. DDDS will share the chart prepared yearly in terms of services at next meeting.

Council member asked if DDDS is aware of the percentage of individuals that are not eligible for Medicaid of total census. DDDS was unaware of Medicaid eligibility for people that live at home before targeted case management. People receiving residential services are close to one hundred percent Medicaid eligible (DDDS continuing to work to reach one hundred percent). Approximately, seventy five percent of people living at home are Medicaid eligible and twenty-five percent are not.

The Governor's recommended budget supports a 1.9 million dollar increase for provider rates.

### **Budget Update**

Nothing new to report.

### **Lifespan Waiver Update**

DDDS received informal questions from CMS after submitting the LifeSpan Waiver renewal. DDDS is answering those questions and plans to submit to CMS tomorrow. Recent experience indicates DDDS should receive approval within a week of submitting answers to the informal questions.

Council member reported that Stacy is doing a nice job explaining process to families. Recently, Stacy provided a question and answer segment at Autism Delaware in Lewes that reportedly, "put family's fears at ease and did a nice job".

The LifeSpan Waiver amendment allowing people living at home to enroll in the Wavier went in effect two years ago. The purpose of this amendment was to expand services and to leverage federal funding instead of using state funding to pay for services for people who live at home. DDDS has added additional services to the LifeSpan Waiver; therefore, the package of services increased significantly for enrollees. DDDS could not continue to use state only funding for services that Medicaid can fund. DDDS reserves state funding for people who cannot meet Medicaid criteria and for services that cannot be covered as a Medicaid reimbursable service.

DMMA amended the 1115 Waiver to allow people enrolling in the LifeSpan Waiver who live at home to continue to receive their acute health care benefit thru a managed care organization (MCO). This did not affect MCO's as they are "keeping what is" so no changes were necessary. Systems changes made to ensure people stayed enrolled.

The 1115 Waiver was also amended to add people who are served in a provider managed residential setting to access their acute health care benefit via an MCO versus fee for service non-Waivered benefits. This meant that MCOs had to examine if additional enrollees fit into a regular rate cell or if rates need to be increased. For states that operate managed care programs a readiness review is required and an external quality review organization (EQRO) is federally mandated to perform MCO readiness reviews. Mercer is DMMA's EQRO and is conducting the MCO readiness reviews next week to ensure that MCO's are ready for change. DDDS is simultaneously making system changes with an implementation date of June 21, 2019. The release of information packets occurred to members informing them of special enrollment period that began May 1, 2019. DDDS prepared approximately 1200 packets with information about each person receiving residential services to assist MCO's to get a picture of what each person's health status looks like. The health benefit managers will use packets to assist person to pick plan that best meet their needs. DMMA is receiving daily reports on how many people enrolled. If person does not choose MCO, they will be auto enrolled into an MCO using an algorithm structured by DMMA. This change is expected to increase services and improve access to needed care.

Before enrolling, Council member contacted their primary care provider for guidance who was adamant about what MCO to choose. Council member reported that the benefit health manager that assisted with MCO enrollment was "fabulous". DXC Technologies employs the benefit health managers. Karen Wilson, DDDS Regional Program Director "did a wonderful job" per one Council member. Capitation payments are prepaid; therefore, MCO's will get payment in July for all individuals that enrolled.

Although DDDS is speaking to DMMA regarding adding day habilitation services to the 1115 Long Term Services and Supports Waiver, for now day habilitation and prevocational services, if receiving, continue as a state service under the rehabilitation option. People staying on Long Term Services and Support (LTSS) Waiver will not be able to access community participation. The expectation and requirements for community participation is higher than day habilitation; therefore, it is only a LifeSpan service. If you meet expectation for community participation, you have met day habilitation expectation. Agencies are delivering individualized day habilitation service that is consistent with service definition while receiving rate of traditional day habilitation service. DDDS is working on a solution for people enrolled in the LTSS plus program to receive supported employment.

### **Provider Enrollment Update**

The list of DDDS providers is located on the DDDS website. "Provider Enrollment Update" will no longer be a standing item on the agenda after today.

Council received the "Status of Providers/Services for New LifeSpan Waiver" spreadsheet. Once authorized provider begins enrolling individuals, contract development may begin.

### **Revisions to DDDS Rules**

- **Reportable Incident Management and Corrective Measures**  
The process began by reviewing multiple drafts. The DDDS hosted multiple all provider meetings and small provider workgroups. Several versions/revisions completed during process; approximately three weeks ago, A.N.D submitted a combined version. The combined version was broken into small sections for more of an identified flow. DDDS explored regulation possibilities with DDDS deputy attorney general (DAG) relative to provider request. Current

draft reflects balance of a good, fair process with non-negotiable regulatory responsibilities. Meetings have gone well and comments/conversations added by other's experiences added significantly to process. Public comment period is June 1 thru June 30, 2019. DDDS will continue to work with providers during the two weeks after public comment period ends to incorporate comments and/or additional information gathered into regulation if required. Posting of the final draft to occur by September 1, 2019.

Providers want an understanding of what triggers DDDS to apply a corrective measure other than having an incident, timelines of reporting, and how to demonstrate that corrective measures taken to ensure incident does not occur in the future. Flexibility for applying standards to account for unusual circumstance was also a concern of providers. Providers wanted an appeal process that occurred outside of DDDS, which DDDS believes is very reasonable.

DDDS has several provider groups meetings to solicit feedback from providers. The current method, Quarterly Provider Meeting, does not lend itself to the kind of back and forth for detailed regulation work. At the suggestion and recommendation for membership from A.N.D., DDDS formed a smaller workgroup of providers. Draft reviewed by larger provider group for comment after development. This process worked extremely well; therefore, DDDS is adopting as process for any cross cutting issues surrounding providers moving forward.

The authority for DDDS to promulgate regulations to manage operations exist in Title 29.

Ways to report an incident include, calling the DDDS toll free number, use incident link on DDDS website, or call any DDDS office during business hours.

Council discussed about sharing of investigation details of outcome. The service recipient and legal guardian are notified of investigation. Per DDDS DAG, Delaware code addresses what investigative information is shared and with whom.

With regard to guardianship: nationally, people are advocating for choices from the least restrictive to the most restrictive. Chairperson is fearful this will push family members to seek guardianship on top of schools and physicians advocating to pursue guardianship in some instances. It may be helpful to ensure DDDS does not encourage people to seek guardianship if individual places in writing, annually, identifying authorized people that may receive information surrounding allegations, and placed in file. Non-speaking individuals require an alternative method. A judge declares incompetency per physician's findings. A surrogate decision maker assists with health decisions. In order to add surrogate decision maker as person to receive investigative findings, changing the law is necessary. Law intends to protect the integrity of the investigation process. A.N.D. disagrees with DAG interpretation of law relating to releasing investigation information.

SIE sends standard letter to person and legal guardian revealing that an investigation is initiated relating to allegation. Council would like the letter to address the DDDS investigative process. SIE to provide updated letter and bring draft back to council for review. DDDS and DAG are meeting next month to review laws/letters to determine specific information for sharing; outcome reported to Council at future meeting. DDDS will invite DAG to future meeting to discuss, at Council suggestion. DDDS will provide sample letters sent before and after investigation to Council at future meeting.

- **Client Funds Management**

DDDS shared the draft Client Funds Management Policy with providers at the last Quarterly Provider Meeting for feedback. Draft shared with provider program coordinators and house

managers as they may have a different perspective than administrators at the recent three-day training program. SIE to send final draft to deputy director for review next week as feedback is due tomorrow. Procedures vetted with a July 1 implementation for policy and procedures. All that attended training were happy to engage and excited about electronic filing of information. A method for auditing in the electronic record, established during training, requires direct support professionals to complete a cash on hand audit every shift and weekly, that generates a monthly report for program coordinator to complete monthly audit. One reason DDDS is amending policy is due to requirement of home and community based settings rule that clients have access to their funds; current policy places barriers on access. The goal is to balance the need for clients to have access to their money without creating opportunities for a misuse of funds.

### **Reorganization of Administration for Community Living (ACL)**

ACL provides grants for community, opportunities for community living, research, and disseminates disability information. Administrative reorganization at the federal level are splitting the Development Disabilities Council (DDC), Association of University Centers on Disabilities (AUCD) and Disabilities Law into two organizations. National advocates, the Protection and Advocacy System and AUCD are writing letters in support of not splitting the groups as they work well together, are powerful together, and have concerns of having staff that do not know independent living well. In Delaware, groups worked well together as partners and advocates.

### **Advisory Council Name Change**

The Governor's Office contacted DDDS regarding name of Council. Although the Governor appoints members of council, statute states name as "Advisory Council to the Division of Developmental Disabilities Services". The names of similar councils are consistent as well.

### **Legislative Update**

- **Dental Bill**  
Senate Bill 92 (dental bill) was in the Senate Hearing Room yesterday and moved to the Health and Social Services Committee. Bill supports 2.5 million per year. Senator Townsend is developing a substitute bill that would begin April 1, 2020 instead of January 1, 2020, to allow DMMA time to receive CMS approval. Later today, the Chairperson is meeting with Rep. Quinn Johnson, JFC member to speak about the dental bill. Bill requires advocate's support by writing letters to JFC members and going to the next hearing. Below is a quote from the bill's original synopsis:

"Payments for dental care treatments are subject to a \$3 recipient copay and the total amount of dental care assistance provided to an eligible recipient may not exceed \$1,000 per year, except that an additional \$1,500 may be authorized on an emergency basis for dental care treatments through a review process established by the Department of Health and Social Services."

Delaware must be sure that there are enough dentist in Delaware to support addition people seeking dental services. The University of Delaware Center for Disabilities Studies received a grant to support training dentist to treat people with IDD. The Delaware Institute for Dental Education and Research (DIDER) partners with Kornberg School of Dentistry at Temple University in an effort for more dentist to practice in Delaware.

- **Guardian Bill – House Bill 123**  
Below is a quote from the bill's original synopsis:

“This Act allows the Public Guardian to act as a representative payee for Social Security benefits or as a VA fiduciary for Department of Veterans Affairs benefits. This Act also allows the Court to appoint a guardian with limited powers, to act as guardian for specific areas of decision-making or for a specific term. By making these changes, this Act will allow the Public Guardian to serve in a more limited role where appropriate, and assist more Delawareans who need short-term assistance, such as to qualify for Medicaid in order to arrange for long-term care or to handle routine financial matters but not make decisions about the care of the person. The ability to serve in a more limited role will increase the Public Guardian's capacity to assist people while the Non-Acute Patient Medical Guardianship Task Force studies options and develops recommendations to improve non-acute patient transitions from acute care settings to more appropriate locations. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.”

DDDS and Office of Public Guardian (OPD) had a shared interest in OPD having the ability to assume guardianship for a limited time-period or for limited purpose, to end afterwards.

- House Bill 93  
DDDS requested DHSS to locate a sponsor to support legislation to clean up Title 29. In 2008, Early Intervention was transferred to Division of Public Health and Division of Management Services as DDDS had no role in Early Intervention service. Rep. Siegfried sponsored the legislation. The bill voted out of Committee, received House approval, voted and unanimously passed by Senate, in a short timeframe. Now, bill goes to Governor to sign into law.

DDDS shared HB93 information with Council verbally before DHSS located sponsor, although, moving forward, DDDS will share legislation documents with Council at onset, at the request of Council Chairperson. Typically, DDDS does not propose legislation.

### **GAO HCBS Report**

Chairperson provide “The Medicaid HCBS Setting Rules: What You Should Know!” informational packet created by the HCBS Advocacy Coalition as Council oversaw the HCBS transition plan. The packet, updated May 2019, includes the setting rules.

The GAO HCBS Report mentioned what Delaware does well twice, (1) state working groups equal representation of stakeholders and intentional to add (people with) intellectual disabilities, aging, physical disabilities and mental health and (2) Delaware relied on existing state infrastructure solid comprehensive plan for training key professionals.

DDDS is not finished with the implementation of the Delaware State Transition Plan. States have until 2022. DDDS is working to get residency agreements in place that are required for people living in a provider managed residential setting and believe there is a path forward. DDDS asked CMS for an extension on this item as the due date for this part had passed.

Delaware rates as number 20 in “Case for Inclusion” which is above national average. Number of families receiving support shows twice as many since 2004 to 2016. Number of residents in large facilities in 2004 was 111 and in 2016, there were 51. People served in ACBS was high where ICF/MR’s was low. Average cost per person in ICF/MR’s were above average. People served in the community increased significantly while money is not much higher. Additional highlight, Delaware has one large state facility serving 51 Americans at a cost of \$395,948.00 per person, per year. Delaware participates in the National Core Indicators and Delaware has no waiting list.

Medicaid defines waiting list as an individual who has applied for the Waiver but for whom there is not a funded slot. DDDS manages funding slots and notifies people when to apply for the Waiver, as slots are available. Anyone can apply for Waiver at any time, but if criteria is unmet or they do not fall into high risk category via risk assessment, waiting for slot may be necessary. Council member reported that a few years ago many people told not to apply. In these cases, people applied with no slot available and the data is old within approximately three months; therefore, if you applied and deemed eligible you must reapply again for DDDS to reassess fresh data.

### **Other Business/Announcements**

During a recent The ARC of Delaware breakfast, a 35 year employed DSP, who had several offers of advancement but declined due to enjoying his work, received recognition. The Advisory Council to the Division of Developmental Disabilities Services want to recognize this employee as well, by sending him a congratulatory letter from the Council.

### **Adjournment**

Meeting adjourned at 11:55 a.m.

## **Future Meetings**

July 18, 2019	10:00 a.m. – 12:00 p.m.
September 19, 2019	10:00 a.m. – 12:00 p.m.
November 21, 2019	10:00 a.m. – 12:00 p.m.