

# DS State Program Standing Committee (SPSC)

October 21, 2021

## Meeting Held Virtually on Microsoft Teams

### Attendees

**Committee Members:** Ed Place, Max Barrows, Barb Prine, Lyn Ujlaky, David Ballou, Bethany Drum, Cheryl Thrall, Dawn Danner

**Guests:** Pam McCarthy, Lee Reilly, Natalie, Lehana Guyette, David Yacovone, Tonya Mason, Francis McFaun, Maryellen Pratt, Elise Haydon, Colette Wilson, Marie Lallier, Jen Hayes, Julie Cunningham, Karen Topper

**State Employees:** Clare McFadden, Lisa Parro, Jessica Bernard, Angela Smith-Dieng, June Bascom, Kirsten Murphy, Susan Aranoff

### Role Call and Review Agenda

A roll call was completed, and the meeting agenda was reviewed.

### Meeting Minutes, SPSC Member Check-In

The SPSC meeting minutes from the September 16, 2021 meeting were reviewed. Bethany made a motion to accept the meeting minutes, Sherry seconded the motion, and the motion was passed.

### Federal Medical Assistance Percentages (FMAP)

Bard Hill and Angela Smith-Dieng represent DAIL on the Agency of Human Services (AHS) workgroup for the spending plan for the Federal Medical Assistance Percentages (FMAP). Vermont will receive a one-time 10% increase of federal match funds for home and community-based services (HCBS), the amount being based on services provided between April 2021 and March 2022, and funding will be available to be spent until March 2024. These funds are to enhance HCBS services throughout Vermont, which entails a host of community-based services and multiple departments. It was initially thought the total funding would be around 161 million dollars; but that projection has been revised to 146 million dollars due to the calculations around FMAP.

In July the initial spending plan was reviewed. On Monday, October 18<sup>th</sup>, AHS submitted a high-level revised spending plan to the Centers of Medicare and Medicaid Services (CMS). AHS will await approval from CMS before additional planning and stakeholder engagement are done. Once CMS approves the plan, hopefully, the funds can start being used in November; however, there will still be steps that need to be completed, with approval for State Appropriations. Throughout this funding period, AHS will be required to submit a quarterly spending plan to CMS.

A revised version of the spending plan is posted on the AHS website. There are broad categories on recruitment and retention, grants to providers to do activities at local level (bonus, training, incentives, etc), category on new services in HCBS, such as exploring residential alternatives as brought up by stakeholders, assistive devices for participants and providers; there is a section to address the CMS rules which includes expanding ombudsman, and a revised category for capital investments (modernizing building and support mobility and sustainable living communities.) The 3% payment rate increase is already in process.

<https://humanservices.vermont.gov/about-us/medicaid-administration/global-commitment-health-1115-waiver/home-and-community-based>

How the funds are distributed to the providers has not yet been established; there is no structure yet. One possibility is to have an RFP process and the providers would apply for a grant. More will be shared by AHS as funding is approved and a process is developed.

### **DS Regulations and DDS System of Care Plan updates**

The updates to the DDS Regulations Implementing the DD Act (Regulations) and System of Care (SOC) plan have been extended twice, and it may need to be extended again as it is possible that it will not be ready for the July 1<sup>st</sup> implementation timeframe. The process to update the plan is continuing, however, it is moving slower than expected. DDS is current recruiting for 6 positions, including the DDS Director. There are also significant workforce issues at the agency level, from direct service providers to program managers, and they need to focus on stability and triaging staff to provide direct supports. The SOC work is a large job for DDS staff and for stakeholder engagement; this is a difficult time to engage in dialogue and obtain input to change the regulations and the SOC plan. Due to these challenges, it is likely that the targeted timeline will not be met.

DDS will not be suggesting big changes to the SOC plan. They are updating and tweaking items already in the plan. However, there are three areas where DDS has received feedback from various stakeholders regarding system improvements and DDS does intend to seek further input on these topics for consideration of changes or additions to the SOC plan. The three areas include: services to adults with autism; examining additional housing options available to people beyond shared living providers (SLP); and allowing the paying of parents to provide services to their children with HCBS funds. Currently parents are being paid, but this is an exception due to the COVID-19 pandemic. All of these areas will require a considerable amount of discussion with stakeholders.

A number of years ago, the DD Act was updated, and it requires certain types of changes to the SOC plan to also be changed in the Regulations. The update to the SOC will require the regulations to be updated in two places: Part 2. Criteria for Determining Developmental Disability, and Part 8. the Grievance, Internal Appeal and Fair Hearing. Part 2 needs to be updated due to a Supreme Court case related to DDS eligibility criteria. The ruling indicates that there was not sufficient clarity in the rules related consideration the error of margin of IQ tests in determining eligibility. For most IQ tests, this is +/- 5 points. DDSD intends to propose changes to the Regulations that will clarify the consideration of the margin of error. This will likely result in a slight expansion of who is eligible for DDS. The change to the grievance and appeals section is necessary due to a change in Federal regulations regarding grievances and appeals for Medicaid services several years ago. The Department of Vermont Health Access (DVHA) has already updated the regulations related to grievances and appeals for all Medicaid services and DDSD is currently following those regulations. The intent is to simply replace all of Part 8 with a reference to the DVHA regulations currently in place

(see <https://humanservices.vermont.gov/sites/ahsnew/files/documents/MedicaidPolicy/hcar-8.100-ga-adopted-rule-7.6.18.pdf>)

A draft of the changes for the SOC plan and regulations have not yet been completed. They will both be reviewed by the DDS SPSC. The regulations will need to go through a review at the Interagency Committee on Administrative *Rules* (ICAR) in the legislature. The SPSC will have an opportunity to review and provide input prior to submitting them to ICAR.

### **DDSD Position Recruitment**

**DDSD Director** – The DDSD Director position is critical and sets the tone for everything. This position has been open for recruitment since June. There have been three rounds of interviews, and the position has been offered to several people, but they have turned down the position to take another position or because of the pay. Other candidates were not considered a good fit for the position. If there is anyone who would like to help stabilize and lead DDSD, they are encouraged to apply. Clare McFadden or Monica White are happy to talk to anyone who would like more information about the position. (Update: Clare, who has been filling in as the Acting Director, will be retiring on 11/19/21. Jessica Bernard will be taking over as the Acting Director on 11/22/21 while the Department continues to recruit.)

**Assistant Director** – Amy Roth is retiring but has graciously extended her retirement until mid-December to help with the onboarding of new staff. Jeff Nunemaker, who has been working in the DAIL Quality Management Team for 6 years, has been promoted to this position. He will be gradually shifting into this role with an official start date of 11/22/21.

**Administrative Services Coordinator III** – After 41 years of service with the State, Lisa Parro will be retiring on 11/19/21. DDSD is actively recruiting for this position and are hoping to get someone hired before she leaves.

**DDSD Senior Auditor and Program Consultant** – Jessica Bernard was promoted to the DAIL Deputy Director of Payment Reform position, therefore, DDSD is actively interviewing for the DDSD Senior Auditor and Program Consultant position that Jessica previously held. (Update: Hilary Conant, who comes to DAIL from Washington County Mental Health DD program, has been hired and will be starting 11/22/21.)

**Quality Management Reviewer** – Since Jeff Nunemaker was promoted to the Assistant Director position, DDSD is recruiting for a Quality Management Reviewer to fill the position Jeff has held.

**DS Public Safety Consultant** - Ed Riddle has resignation effective 11/5. DDSD is actively recruiting to fill his position, a critical position in division in supporting agencies and training for people who are at a high risk. Ed is staying within the DS system, working for Northwest Counseling Support Services.

**DS Children’s Specialist** - Diane Bugbee is retiring at the end of January. DDSD is getting started on the recruitment for this position.

It is a top priority for DAIL to get these positions filled, and the division is working on contingency planning to cover the tasks until they are filled.

### **Conflict of interest in Case Management (COI)**

The Department of Vermont Health Access (DVHA) has been communicating with CMS about the conflict of interest in case management (COI) as part of the waiver renewal process. Vermont proposed in the global commitment waiver a choice model to address COI. The Choice Model allows an individual to choose an independent case manager or choose someone from the agency as their case manager. Vermont has been talking with CMS about this issue for years, and on Monday, DVHA and DAIL met with CMS about the final guidance on COI for the waiver renewal in January.

There is language in the rule that states there is an exception to independent case managers if the provider is the only willing, qualified provider available; however, this cannot be done on a statewide basis. CMS is not going to allow Vermont to have a Choice model; Vermont will need to submit a plan within 60 days about how we will come into compliance with COI. The State may have up to 5 years to come into compliance with the plan, as approved by CMS. More information will be coming out soon.

The CMS programs in AHS (Developmental Disabilities, Choices for Care, Brain Injury, and a subset of the Department of Mental Health services) will work internally to develop a plan. Tomorrow will be the first meeting for this. Each AHS program is a little different so there will be some variations about how Vermont will come into compliance. AHS will loop back with the stakeholders about the plan.

Even with this plan, DAIL would still like to move forward with an ombudsman support for DDS, but this has not yet been worked out.

There are a number of things that will need to be included in the plan. These include defining exactly what the duties of case management are and what duties will remain with providers; recruiting new case management organizations; developing standards for the delivery of case management; determining DAIL's oversight role for ensuring quality; determining how to pay for independent case management; and probable changes to statutes, regulations and SOC plan. The Choice model may be a stepping stone to the final plan. Providers and other stakeholders will be included during the process after the overall plan (essentially a plan to plan) is approved by CMS.

Concerns about pulling funding for case management services from current providers, taking on a large task while bandwidth and morale is low due to ongoing impacts of the pandemic, how agencies will retain staff, and having someone from outside the system plan services were voiced by meeting attendees. One individual stated they have been through this process three times and it works better than imagined and offers opportunities for the individual to 'drive their own show.' With person-centered planning an individual could decide who is at their meeting and invite their service coordinator, the outside person is just there to facilitate and provide options.

### DS Payment Reform

DAIL has received a request from VCP to pause the implementation of the new independent needs assessment process using the SIS-A, which is a major component of DS Payment reform. Addressing COI requirements blends with payment reform. DAIL needs to think about how this will affect independent assessment and payment reform. During an additional conversation with leadership, Mary Moulton, and Beth Sightler, a review of all the avenues that can be paused or slowed down were discussed along with the possible consequences, and how can these things be addressed while look at the bigger picture. For example, if the SIS-A is paused, what happens to the current assessors; will things have to start over with training again in 6 months. There is not a solid response right now but DAIL can reassure everyone that every avenue is being looked at. (Update: The DAIL response to the request to pause the SIS-A has now been posted on the DDSD website: [https://ddsd.vermont.gov/sites/ddsd/files/documents/SIS-A\\_Status\\_2021-11-10.pdf](https://ddsd.vermont.gov/sites/ddsd/files/documents/SIS-A_Status_2021-11-10.pdf))

Barb made a motion that the DS SPSC recommend a pause for the SIS-A until the agency staff vacancies return to pre-pandemic levels. Cheryl seconded the motion. Some of the discussion that followed:

- Understand staff are trained to do the SIS-A but weighing where there are problems, it takes staff time to do the assessment, and assessment that is essentially a study and may not change the level of services for 3 years.
- If pause means shutting down, that doesn't feel good.
- Where will the independent assessment sit with COI, case management or single entity. How does this affect 5-year plan.

- It starts with providing services to people who need them. With workforce issues and the need for everyone to come back together, need thoughtful conversations about quality of services and enable people to have this. There are bigger issues to tackle.
- Believe will be doing SIS-A, just not a time to do it now.
- Need to get back to where we were prior to pandemic with payment reform. Need to keep focus on what can do about 5-year plan with COI and plan for the best with contingencies.
- The goal for the SIS-A is to provide more equity in the system – a good goal. The idea of having a small group do them now was to see if it would resolve inequities that exist. If this is paused, this information that will determine the system you want will be lost. However, is there a lesser number for the small group that could be used to accomplish the same thing?

Excerpts of a meeting chat Max added during the meeting: “The GMSA board has reviewed the VCP letter. And our response is complicated. What is important to GMSA is that people who get services need to have more plain language information about the SIS. They need to have an opportunity to review the SIS and ask their questions about it ahead of time.” “...as far as signing the VCP letter, it does not make sense to our board to do that because what is said in the letter has not been what we have experienced.” “Overall, our board is most concerned about losing money in their budgets.”

The motion passed: 4-Yes and 3-Abstained. (The quorum for voting was verified after the meeting ended)

## Updates

An inquiry was made about the process to add items on the SPSC agenda. Per the SPSC Operational Procedures: “...Other members of the Committee may also ask for items to be put on the agenda. If a person wants to have something on the agenda, he/she needs to let one of the Co-Chairs or the Division Director know.”

The DD Council currently has 5-10 grants for small organizations, agencies or allies who want to pilot or jump start an initiative. The deadline to apply is November 1<sup>st</sup>. Let Kirsten know if you are interested. The RFP is on the State website as well as the DD Council website.

<https://ddc.vermont.gov/plan-and-projects/seeds-grants>

Bethany reported that Susan Yuan was feeling stronger and was ready to come back to Vermont. Susan urges the assessments to be paused until we get it right, person centered and individualized.

Julie Cunningham stated that Families First is supporting two young adults with intellectual disabilities and were in DCF custody in an apartment setting. Last week the landlord was irritated with them about the cleanliness of the apartment, and the direct support worker spend the whole day helping them clean and hang Halloween decorations. The landlord passed it was flying colors. This is just one example of staff going above and beyond.

#### **SPSC Executive Session**

Some of the SPSC Nominating Committee members had to leave the meeting, so the Nominating Committee would like to move this discussion to the next meeting.