Additional Proposed Modifications to the Amended

Regulations Implementing the Developmental Disabilities Act of 1996

May 10, 2017

DD Regulations provision	Current language in the Final Proposed Rule submitted to LCAR	Modifications DAIL is willing to make to the Final Proposed Rule submitted to LCAR[1]
1.2	"**Adverse benefit determination"** means…	Delete the definition of **"Adverse benefit determination".**
1.4	**"Appeal"** means a review of an adverse benefit determination by DVHA, its subcontractors, agencies, or, a Supportive Intermediary Service Organization"	**"Appeal"** means a request for an internal review of an action by the Department or a designated agency or a specialized service agency (DA/SSA). (See Part 8).
1.20	**"Fair Hearing"** means the process by which an applicant for or recipient of developmental disabilities services can challenge an adverse benefit determination.	**"Fair Hearing"** means am appeal filed with the Human Services Board, whose procedures are specified in rules separate from the MCE grievance and appeals process. (See restored Part 8.2 (f)).
1.22	**"Filed" or "notified"** means personally delivered, or deposited in the U.S. mail with first class postage affixed.	Moved to 8.2 (g), which is being restored.
1.25	**"Grievance"** means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the recipient's rights regardless of whether remedial action is requested. Grievances include a recipient's right to dispute an extension of time proposed by DVHA, its contractors, agencies, or a Supportive Intermediary Service Organization	**"Grievance"** means an expression of dissatisfaction about any matter that is not an action. Possible subjects for a grievance include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the recipient's rights. If a grievance is not acted upon within the timeframes specified in the rule, the recipient may ask for an appeal under the definition above of an action as being a "failure to act

[1] The Department reserves the right to further modify these proposed changes before submission to LCAR, following receipt and review of additional public comments.

		in a timely manner when required by state rule." If a grievance is composed of a clear report of alleged physical harm or potential harm, the agency or Department shall immediately investigate or refer to the appropriate investigatory body (fraud, malpractice, professional regulations board, Adult Protective Services).
1.31	**"Inter-governmental Agreement (IGA) Partners"** means…	Delete the definition of **"Inter-governmental Agreement (IGA) Partners".**
1.47	**"Subcontractor"** means…	Delete the definition of **"Subcontractor".**
1.49	"**Supportive Services"** means therapeutic services that cannot be accessed through State Plan Medicaid. These are therapeutically or medically appropriate services that include behavior support and consultation; assessment, consultation and training for communication supports; skills-based training such as dialectical behavior therapy skills group or sexuality groups; and other services provided by licensed or certified individuals (such as therapeutic horseback riding).	"**Supportive Services"** means therapeutic services that cannot be accessed through State Plan Medicaid. These are therapeutically or medically appropriate services that include behavior support and consultation; assessment, consultation and training for communication supports; skills-based training such as dialectical behavior therapy skills group or sexuality groups. This includes other therapeutic or medically appropriate services not covered under State Plan Medicaid when provided by licensed or certified individuals (such as therapeutic horseback riding).
4.3(b): second sentence	For individuals who were receiving services prior to being in one of these facilities, an application shall be filed at the DA with whom the person was last associated.	For individuals who were receiving services just prior to being in one of these facilities, an application shall be filed at the DA which was last responsible prior to the individual entering the facility.
4.6: last sentence	Services authorized shall be based upon the most cost-effective method of meeting an individual's assessed needs, the eligibility criteria listed in Section 4.7, as well as guidance in the *System of Care Plan* and current *Medicaid Manual for Developmental Disabilities Services*.	Services and the funding amount authorized shall be based upon the most cost-effective method of meeting an individual's assessed needs, the eligibility criteria listed in Section 4.7, as well as guidance in the *System of Care Plan* and current *Medicaid Manual for Developmental Disabilities Services*. When

		determining cost effectiveness, consideration shall be given to circumstances in which less expensive service methods have proven to be unsuccessful or there is compelling evidence that other methods would be unsuccessful.
4.7(a)(1)(C)	Retain current language and add additional language to access criteria.	Add "Children who are receiving care coordination, case management or service coordination from another AHS funded source listed in the Bridge Program Guidelines are not eligible to receive Bridge Program Care Coordination."
4.7(d)(1)(C)	FMR is available to children up to, but not including, age 21 living with their biological/adoptive families or legal guardian.	FMR is available to children up to, but not including, age 21 living with their biological/adoptive families or legal guardian, who are not receiving HCBS.
4.7(e)(1)(C)	An individual who lives with their family (i.e., unpaid biological, adoptive and/or step-parents, adult siblings, grandparents, aunts/uncles, nieces/nephews and legal guardians) or an unpaid family member who lives with and supports an individual with a developmental disability.	An individual who lives with their family (i.e., unpaid biological, adoptive and/or step-parents, adult siblings, grandparents, aunts/uncles, nieces/nephews and legal guardians) or an unpaid family member who lives with and supports an individual with a developmental disability are eligible. Individuals living independently, or with their spouse, and those receiving HCBS are not eligible.
4.7(n)(1)(C)	Retain current language and add additional language to access criteria.	Add "An agency may not bill for these services and HCBS on the same day."
4.7(o)(1)(C)	Retain current language and add additional language to access criteria.	Add "An agency may not bill for TCM and HCBS or other Medicaid funded case management services on the same day."
4.7(i): last two sentences of the introductory paragraph	These funds may be distributed to agencies at the discretion of the Department and are not guaranteed. The amount and timing of distribution is at the discretion of the Department.	Subject to availability, these funds shall be distributed to agencies. The amount and timing of distribution is at the discretion of the Department.
4.10 (c) and 4.10 (c)(1)	…amount of funding authorized at the DA.	…the amount of funding authorized for the DA to provide services.
5.3: second sentence	For complex situations, the Supportive ISO may consult with the local Designated Agency or an independent evaluator to determine strategies regarding how an individual's needs may best be met.	For complex situations, the Supportive ISO may consult with an independent evaluator, the Division or the local Designated Agency to determine strategies regarding how

		an individual's needs may best be met.
Part 8	Medicaid-funded services for eligible individuals with developmental disabilities are part of the Global Commitment to Health 1115(a) Medicaid Demonstration. The Agency of Human Services (AHS), the Department of Vermont Health Access (DVHA), which, as if it were a non-risk PIHP, operates a managed care-like model under the Demonstration, DVHA's subcontractors, agencies and Supportive ISOs shall comply with all aspects of 42 C.F.R. Part 438, Subpart F, in resolving all grievances and appeals initiated under these regulations. The provisions of 42 C.F.R. Part 438, Subpart F are fully incorporated herein by reference except to the extent that definitions have been modified to reflect the grievance and appeal process available to individuals and their designated representatives accessing developmental disabilities services. Recipients and providers shall not be subject to retribution or retaliation for filing a grievance or an appeal with DVHA and its subcontractors.	Strike the current language in its entirety and restore Sections 8.1 through 8.11, as set forth in the existing *Regulations.*
9.5(a)	Within three months of being hired or entering into a contract, workers shall be trained in and demonstrate the knowledge and skills necessary to support individuals in (a)(1) through (4) of this section.	Within three months of being hired or entering into a contract, workers shall be trained in and demonstrate the knowledge and skills necessary to support individuals, in (a)(1) and (2) of this section. Workers shall be trained in or demonstrate knowledge and skills necessary to support individuals, in (a)(3) and (4) of this section.
9.6 (a)	For the purposes of this section, "emergency" means an extraordinary and unanticipated situation of fewer than 96 hours.	For the purposes of this section, "emergency" means an extraordinary and unanticipated situation of fewer than 72 consecutive hours.
9.6 (b)	In an emergency, if the unavailability of a trained worker creates a health or safety risk for the individual, a worker who has not received pre-service training or	In an emergency, if the unavailability of a trained worker creates a health or safety risk for the individual, a worker who has not received pre-

	demonstrated knowledge in all pre-service areas may be used for up to 96 hours as long as essential information about the individual is communicated to the worker and he or /she has immediate access to all the documents and information covering all areas of Pre-service training (see Section 9.4).	service training or demonstrated knowledge in all pre-service areas may be used for up to 72 hours after the worker first begins to work with the individual in response to the emergency, as long as essential information about the individual is communicated to the worker and he or she has immediate access to all the documents and information covering all areas of Pre-service training (see Section 9.4).
Add new 9.6 (c)		(c) This exception does not apply to workers performing special care procedures. All requirements in Section 7 of these regulations must be met prior to staff performing special care procedures.

Technical corrections

Cover page	Part 8. Global Commitment, Grievances, Appeals and Fair Hearings	Part 8. Grievance, Internal Appeal and Fair Hearing
Table of Contents	Part 8 Global Commitment, Grievances, appeals and Fair Hearings	Part 8 Grievance, Internal Appeal and Fair Hearing Restore 8.1 through 8.11
1.27 Final sentence	Home supports will be in compliance with HCBS rules which emphasize choice, control, privacy, tenancy rights, autonomy, independence and inclusion in the community.	Home supports shall be in compliance with HCBS rules which emphasize choice, control, privacy, tenancy rights, autonomy, independence and inclusion in the community.
4.7 throughout under Financial Eligibility	DCF/Economic Services Division	Department of Vermont Health Access
4.7 (g)(1)(C)(i)(3)(B)	see Section (g)(3), infra	see Section (g)(2), infra
4.7 (h)	**Intermediate Care Facility**	**Intermediate Care Facility for Individuals with Developmental Disabilities**
4.7 (j)	Medicaid Waivers	HCBS funding