Report to
The Vermont Legislature

Report on: Oversight of services for individuals with developmental disabilities

In Accordance with:
Act No. 186 of 2022:
An act relating to the system of care for individuals with developmental disabilities

Submitted to: House Committee on Human Services
Senate Committee on Health and Welfare

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Commissioner

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Report Date: November 15, 2022

VERMONT
AGENCY OF HUMAN SERVICES
Department of Disabilities Aging and Independent Living

1. Summary:

This report is submitted by the Department of Disabilities, Aging and Independent Living (DAIL) pursuant to Act 186 of 2022, regarding quality assurance and oversight of home and community based services (HCBS) programs for individuals with developmental disabilities. In addition to information regarding the Developmental Disabilities HCBS program, this report also includes information regarding the Choices for Care Program and the Brain Injury Program, providing a comprehensive overview of quality assurance and oversight across DAIL's three HCBS programs that serve Vermonters with developmental disabilities.

Environmental factors have impacted both access to services and the quality of services in recent years. These factors include workforce shortages, inflation, and the COVID19 public health emergency. In addition, the nature of this service category – in which benefits are determined by available funding rather than a list of covered services – necessarily impacts the member experience.

DAIL is currently engaged in discussions with the federal Centers for Medicare and Medicaid Services (CMS) regarding changes to quality oversight and performance management activities as well as the appropriate timeline to implement these changes. CMS is a key funder and regulator of HCBS and all Medicaid programs and therefore a crucial partner in determining states' quality review approaches. Several Vermont stakeholders and partners are also interested in efforts to improve and modernize DAIL's HCBS quality management work.

DAIL's current quality service reviews and quality management practices are largely founded on approaches that have been in place since 2005. Federal regulations and prevailing national practices have evolved in the past seventeen years. Vermont's governance under earlier versions of the Global Commitment to Health Medicaid Waiver has to some degree resulted in Vermont's quality oversight practices not evolving with prevailing national practices. This result was not intentional but rather a byproduct of the Global Commitment's 1115 Medicaid Waiver authority, allowing Vermont to proceed on a different track than HCBS programs operating under different authorities in other states. However, the most recent Global Commitment Medicaid Waiver includes special terms and conditions that increase HCBS quality management obligations. Discussions between the Agency of Human Services and the federal Centers for Medicare and Medicaid Services (CMS) regarding the details of quality management for Vermont's HCBS programs under the Global Commitment Medicaid Waiver are ongoing. It is important to note that these discussions will shape the future of Vermont's HCBS quality management activities,

This report and its appendices also provide an overview of current quality oversight activities across the three DAIL HCBS programs and makes general recommendations regarding future modifications to these DAIL quality improvement activities. Recognizing that Vermont should expect greater clarity and direction from CMS in the coming months, recommendations for future modifications should be founded on that future clarity and direction. Anticipated elements of future modifications are identified in this report.

2. Purpose:

This report is submitted to address the requirement in Section 3(a) of Act 186 of 2022 (hereafter, 'the Act'):

> "Sec. 3. REPORT; QUALITY ASSURANCE REVIEW
> (a) On or before November 15, 2022, the Department of Disabilities, Aging, and Independent Living shall submit a written report to the House Committee on Human Services and to the Senate Committee on Health and Welfare regarding the oversight of services for individuals with developmental disabilities. The report shall, at a minimum: (1) identify the current level of quality service reviews required by the Department for home- and community-based services provided by the designated and specialized service agencies and other contracted agencies that provide services to individuals with developmental disabilities and recommend any modifications to these requirements or processes; and
> (2) identify the current requirements for the designated and specialized service agencies and other providers to perform on-site visits to individuals with a developmental disability receiving Medicaid-funded residential services, including the residences of individuals residing with shared living providers; the residences of individuals receiving services in their own home or the home of their family; and the residences of individuals residing in residential care homes, therapeutic community residences, nursing facilities, and any other residential settings."
> https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT186/ACT186%20As%20Enacted.pdf

3. Scope of programs:

The Act defines the scope of programs for this report:
"…home- and community-based services provided by the designated and specialized service agencies and other contracted agencies that provide services to individuals with developmental disabilities and recommend any modifications to these requirements or processes…"
"…the current requirements for the designated and specialized service agencies and other providers to perform on-site visits to individuals with a developmental disability receiving Medicaid-funded residential services, including the residences of individuals residing with shared living providers; the residences of individuals receiving services in their own home or the home of their family; and the residences of individuals residing in residential care homes, therapeutic community residences, nursing facilities, and any other residential settings."

DAIL manages three Home and Community Based Service (HCBS) programs that provide services to individuals with developmental disabilities. The Developmental Disabilities HCBS program is specifically designed to serve people with developmental disabilities. The two other DAIL HCBS programs are, the Choices for Care Program and the Brain Injury Program. While not specifically designed to serve people with developmental disabilities, these programs do serve some people with developmental disabilities. As such, all three DAIL HCBS programs are included in this report.

4. Current requirements for providers to perform on-site visits

The Act requires DAIL to

> "(2) identify the current requirements for the designated and specialized service agencies and other providers to perform on-site visits to individuals with a developmental disability receiving Medicaid-funded residential services, including the residences of individuals

residing with shared living providers; the residences of individuals receiving services in their own home or the home of their family; and the residences of individuals residing in residential care homes, therapeutic community residences, nursing facilities, and any other residential settings."

Note: The Act includes a uniquely broad definition of "Medicaid- funded residential services" by "including…the residences of individuals receiving services in their own home or the home of their family." "Medicaid- funded residential services" are commonly defined as services funded by Medicaid to provide 24-hour residential supports, thus excluding people living in their own homes or the homes of family members. This difference is significant because of the greater responsibility and control that is asserted over individuals who do receive 24-hour residential services. Greater responsibility and control are directly associated with a greater potential to cause harm, and thus Medicaid programs generally perform more intensive quality oversight over 24-hour residential settings.

Medicaid provider organizations provide the first level of monitoring and oversight of people receiving Medicaid HCBS services, including Medicaid-funded residential services that provide 24-hour residential care. Current requirements for on-site visits by provider staff can be summarized as:

1. Individuals residing in licensed residential care homes, therapeutic community residences, nursing facilities, and any other licensed residential settings: all these facilities are subject to surveys by the DAIL Division of Licensing and Protection. People who live in residential facilities funded by the DS HCBS program are in scope for DA/SSA provider oversight.
2. Individuals residing with contracted shared living providers/adult family care providers: People who live in these settings receive monitoring by an HCBS case manager/service coordinator every 30-60 days, with an in-home visit at least once a year.
3. Individuals receiving services in their own home or the home of a family member: People who live in these settings receive monitoring by an HCBS case manager/service coordinator every 30-60 days, with an in-home visit at least once a year.

Additional requirements can be found in Appendix A.

Vermont has begun to design and implement conflict-free case management in all five Medicaid HCBS programs, anticipated to be complete in three years. The implementation of conflict-free case management will insert a new independent entity in the oversight of HCBS services, representing a third element of monitoring and oversight.

5. Current DAIL quality service reviews

The Act requires DAIL to

> "(1) identify the current level of quality service reviews required by the Department for home- and community-based services provided by the designated and specialized service agencies and other contracted agencies that provide services to individuals with developmental disabilities and recommend any modifications to these requirements or processes…"

The term "quality service review" is specific to Developmental Disabilities HCBS (see https://ddsd.vermont.gov/quality-services-review), used to describe standardized quality management activities that are performed by the Developmental Disabilities Services Division. A

quality service review is a review of a single provider organization (Designated Agency or Specialized Service Agency) that includes a visit and conversation with everyone in a selected sample of the people served; conversations with people who provide services to them; conversations with guardians/family members, where applicable; and a review of provider records related to the individuals in the review sample.

This report describes the current level of quality oversight/reviews across programs and divisions, noting that elements in these processes do not all align with the elements of the "quality service review" process currently used for Developmental Disabilities HCBS.

The Act requires a review of the "level" of quality service reviews. Because the activities in "quality service reviews" are defined (https://ddsd.vermont.gov/quality-services-review), and the second report required by the Act is intended to address the frequency of quality reviews, this report defines the term 'level' to mean the sample size and frequency of quality reviews.

Current requirements for quality reviews by DAIL staff can be summarized as:

1. Individuals residing in licensed residential care homes, therapeutic community residences, nursing facilities, and any other licensed residential settings: all these facilities are subject to surveys by the DAIL Division of Licensing and Protection. People who live in residential facilities funded by the DAIL DS HCBS program are in scope for DAIL DS HCBS quality reviews.
2. Individuals residing with contracted shared living providers/adult family care providers: People who live in these settings are in scope for all DAIL HCBS quality reviews.
3. Individuals receiving services in their own home or the home of a family member: People who live in these settings are in scope for all DAIL HCBS quality reviews.

Additional requirements can be found in Appendix B.

6. Recommended modifications to current quality review requirements or processes

DAIL's primary recommendations are 1) to align quality reviews to CMS requirements, and 2) to engage an independent contractor to review the status of DAIL quality management activities and compliance with anticipated CMS obligations.

The Agency of Human Services and CMS are currently working out the details and timeline of changes to Vermont's quality management activities. Based on these ongoing discussions, the approach will likely be rooted in prevailing Medicaid HCBS approaches as captured in the CMS "Total Quality Improvement Cycle" and "Quality Framework." Figures 1 and 2 illustrate this approach.

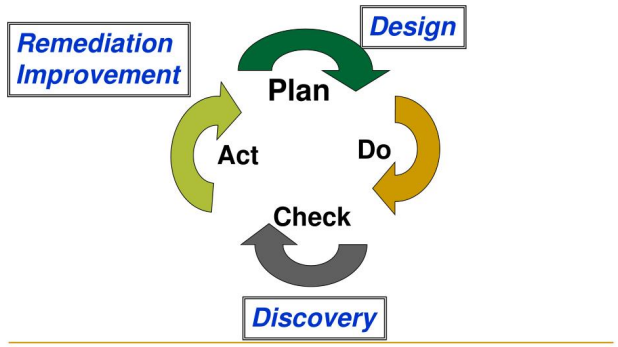

Figure 1 The CMS Total Quality Improvement Cycle. More information at https://www.slideserve.com/amos-good/cms-hcbs-quality-initiative

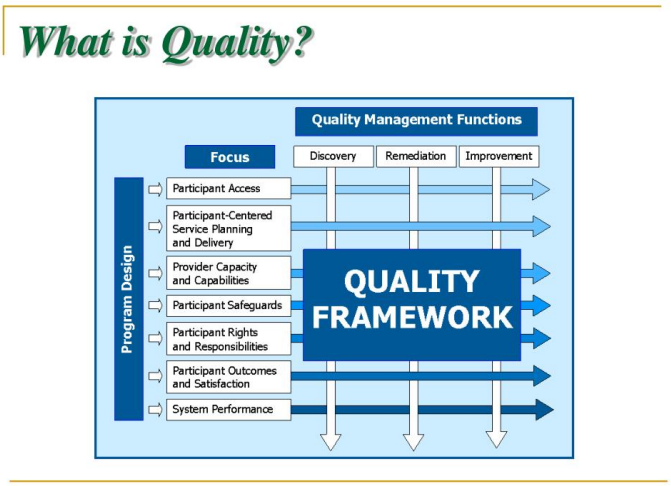

Figure 2 The CMS Quality Framework

Due to the timing of this report coinciding with discussions with CMS, it is premature to propose specific changes in DAIL quality management activities at this time. However, based on prevailing CMS expectations for Medicaid HCBS programs, it is likely that steps may include:

1. Greater detail regarding HCBS quality and performance in written DAIL policies and guidelines, including timeframes and reporting of metrics.
2. Reporting of metrics regarding compliance with CMS HCBS regulatory assurances and sub-assurances.
3. Clear scope, timelines, and reporting of performance metrics for critical incident reporting, investigation, and remediation.
4. A relative emphasis on oversight and monitoring of Medicaid-funded residential settings, where higher levels of control over multiple elements of a person's life are logically associated with a greater risk of doing harm, particularly in settings where direct care providers are relatively unskilled and unsupervised.
5. Increases in the frequency of provider reviews and the sizes of participant samples that are reviewed.
6. A requirement for annual surveys of HCBS participant perception, experience of care, and satisfaction, including representative samples.

Given the dynamic environment in which the HCBS programs currently function, DAIL plans to pursue an independent contractor to review the status of DAIL quality management activities and compliance with CMS obligations, and to make recommendations for future modifications and improvements. Such modifications would likely include a combination of improvements to policies and guidelines, data management infrastructure, State staff capacity, and contractor capacity, in the context of the CMS HCBS quality management framework and associated obligations.

Appendix A: Current requirements for providers to perform on-site visits to individuals
This table summarizes the requirements of providers (including case managers/service coordinators) to perform on-site visits to individuals.

	DAIL Adult Services Division (Brain Injury Program providers)	DAIL Adult Services Division (Choices for Care providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
1. Individuals residing in licensed residential care homes, therapeutic community residences, nursing facilities, and any other licensed residential settings.	• Employees staff the facilities that are owned/operated by the providers, thus on-site visits occur routinely. Training and supervisions practices vary. • No separate case management visit requirement (conflict-free case management pending).	• Employees staff the facilities that are owned/operated by the providers, thus on-site visits occur routinely. Training and supervisions practices vary. • No separate case management visit requirement (conflict-free case management pending).	• Employees staff the facilities that are owned/operated by the providers, thus on-site visits occur routinely. Training and supervisions practices vary. • Service coordinator is onsite and typically a supervisor of staff. • No separate case management visit requirement (conflict-free case management pending). • A small number of nursing facility residents with developmental disabilities receive supplemental services from these agencies under federal PASARR (Preadmission Screening and Resident Review) requirements.
2. Individuals residing with contracted shared living providers/adult family care providers.	• Provider service coordinator: contact required every 30 days, face:face contact required every 60 days; contact required at least once per year in the shared living provider's home.	• Provider service coordinator: contact required every 30 days, face: face contact required every 60 days; contact required at least once per year in the adult family care home. • No separate case management visit requirement, pending conflict-free case management.	• Provider service coordinator: contact required every 30 days, face: face contact required every 60 days, contact required at least once every 60 days in the shared living provider's home.
3. Individuals receiving services in their own home or the home of a family member.	• Case manager contact required every 30 days; face:face contact required every 60 days; contact required at least once per year in the person's home.	• Case manager contact required every 30 days; face:face contact required every 60 days; contact at least once per year in the person's home.	• Hours of Service Coordination are identified in each individual's HCBS waiver. For individuals living in their own home or with family, the frequency and type of contact are

	DAIL Adult Services Division (Brain Injury Program providers)	DAIL Adult Services Division (Choices for Care providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
			individualized for each person depending on their need and request. This is identified during the individual person-centered planning process. Best practice recommends contact at a minimum of every 30 days, with face: face contact every 60 days.

Appendix B: Current state: DAIL quality service reviews of providers

This table summarizes review/oversight activities by the three DAIL divisions that perform compliance and quality reviews of providers. This table does not include oversight of services and settings performed by other entities (e.g., the provider agency itself, case managers/service coordinators/program managers, Long Term Care Ombudsman, fire marshal, and local zoning/permitting/housing inspections.)

	DAIL Division of Licensing and Protection Survey and Certification (licensed providers)	DAIL Adult Services Division (Choices for Care and Brain Injury Program providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
Number of people served in HCBS programs:			
	N/A *Note licensed capacity of 6920 in residential settings below.*	**2294 (as of July 2021)** *Includes 82 in BIP.* *Does not include 551 in CFC Enhanced Residential Care, 1085 in CFC moderate needs group.*	**3,281 (sfy21 total undup.)** *Does not include 977 in flexible family funding, 243 in family managed respite, 382 in Bridge program.*
Number of DAIL quality review staff:			
	26 FTE positions	**5.5 FTE positions**	**5.3 FTE positions**
General frequency of DAIL quality reviews of providers:			
	Every 1-3 years.	Every 3-4 years.	Every 2 years.
Providers and settings:			
Number of provider entities/agencies by Division and HCBS program	256 providers, including 197 licensed nursing and residential facilities with 6920 licensed beds: • Skilled Nursing Facilities: 38 (2980 beds) • Residential Care Homes: 102 (2376 beds) • Assisted Living Facilities: 16 (1092 beds) • Therapeutic Community Residences: 40 (451 beds) • Home for the Terminally Ill: 1 (21 beds) • Home Health Agencies: 11	• 51 providers: • CFC Case Management providers: 14 (5 AAA, 9 HHA) • CFC Adult Family Care provider agencies: 14 • *Sept 2022 Contracted Adult Family Care homes: 207 homes, 243 residents (including 15 with ID/DD)* • T2: 1 • Adult Day providers: 11 • ARIS (fiscal employer agent for independent employers and workers): 1	15 providers, not including T2: • Designated Agencies (DAs): 10 • Specialized Services Agencies: 5 • T2: 1 • *Sept 2022 Contracted Shared Living Provider homes: 1250 homes, 1360 residents with ID/DD* • *ARIS (fiscal employer agent for independent employers and workers): 1, overseen by ASD*

	DAIL Division of Licensing and Protection Survey and Certification (licensed providers)	DAIL Adult Services Division (Choices for Care and Brain Injury Program providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
	• Hospice agencies (separate from home health agency reviews): 11 • Hospitals: 16 • Ambulatory surgical centers: 2 • End stage renal disease centers: 8 • Rural health clinics:10 • Mobile x-ray (every 5 years): 1	• Brain Injury Providers: 10 (does not include 3 reviewed by DLP) *ASD staff perform no quality reviews of these providers:* • *Skilled Nursing Facilities* • *Residential Care Homes* • *Assisted Living Facilities* • *Therapeutic Care Residences* • *Home Health Agencies (except for case management)* • *agencies paid under 'Flexible Choices'*	
DAIL quality service review frequency by residential setting:			
Licensed skilled nursing facilities	Every year. Complaint surveys may be more frequent.	No quality monitoring visits to licensed nursing facilities.	No quality monitoring visits to licensed nursing facilities.
Licensed residential facilities (3 or more people; residential care homes, assisted living, therapeutic community residences).	Every year starting in sfy23 based on increased DAIL staff positions in sfy23. Complaint surveys may be more frequent.	No quality monitoring visits to licensed residential facilities.	Licensed residential facilities funded by DDSD are included in DA/SSA agency reviews; every two years.
Unlicensed staffed living (limited to 1-2 people)	N/A none.	One such setting exists for ASD. May be visited if included in AFC provider agency review sample.	May be included in DA/SSA review sample; every two years.
Contracted shared living/adult family care homes (limited to 1-2 people, not licensed, is an HCBS funded 'setting')	N/A none.	DAIL staff visit homes if included in AFC provider agency review sample.	DAIL staff visit homes if included in DA/SSA agency review sample; every two years.
Own home/family home (owned, rented, and/or shared; not an HCBS funded 'setting')	N/A none.	No visits to homes by DAIL staff.	No visits to homes by DAIL staff unless requested.
General sample size in DAIL quality reviews of providers:			
	Sample sizes vary by type of provider.	15% of people receiving HCBS services. Different sample minimums and maximums for providers serving small and large	15% of people receiving HCBS services. Smaller sample of 10% at Howard Center due to the large number of people served.

	DAIL Division of Licensing and Protection Survey and Certification (licensed providers)	DAIL Adult Services Division (Choices for Care and Brain Injury Program providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
		numbers of people.	
DAIL quality service review frequency by provider type:			
Designated Agencies (AFC for CFC)	N/A none.	Agency review every two years (not meeting this schedule due to inadequate staffing); includes visit to sample of homes.	Every two years.
Specialized Services Agencies (AFC for CFC)	N/A none.	Agency review every two years (not meeting this schedule due to inadequate staffing); includes visit to sample of homes.	Every two years.
Brain Injury Program Provider Agencies	N/A none.	Agency review every two years (not meeting this schedule due to inadequate staffing); includes visit to sample of homes.	N/A none.
CFC case management agencies (Area Agencies on Aging, Home Health Agencies)	N/A none.	Agency review every two years (not meeting this schedule due to inadequate staffing).	N/A none.
Home Health Agencies	Every three years (complaint surveys may be more frequent). DLP reviews use agency Designation Rules overall, not specific to type of service: patient assessment and plan of care, and patient rights. Does not include review/compliance with CFC program requirements.	Included in case management reviews.	N/A none.
Adult Day Programs	N/A none.	Agency review every two years (not meeting this schedule due to inadequate staffing).	No on-site reviews. Very few participants from DS. Rely on ASD and service coordinator reviews.
FEA/ARIS Financial Management Service	N/A none.	Ongoing and regular reviews of performance related to EVV and program integrity; focus on financial management and compliance.	No specific or on-site reviews. Emphasis on management of budgets/plans, and on service coordinator role.
'T2' support agency	N/A none.	Not currently reviewed due to inadequate staffing.	Every two years.

Appendix C: Links to related materials

Global Commitment Special Terms and Conditions: State Quality Strategy [16.14, page 30]:
https://humanservices.vermont.gov/sites/ahsnew/files/doc_library/VT-GCH-Extension-STCs-Technical-Corrections-10-12-2022.pdf

DDSD Quality Reviews:
Developmental Services (vermont.gov)

DDSD Health & Wellness Guidelines:
https://ddsd.vermont.gov/sites/ddsd/files/documents/health-and-wellness-standards-and-guidelines.pdf

DDSD memos and policies:
https://ddsd.vermont.gov/resources/policies

DDSD and ASD housing inspections:
https://ddsd.vermont.gov/housing-safety-and-accessibility-process

ASD Quality Reviews:
Adult_Services_Division_Quality_Overview-2022.pdf (vermont.gov)

Choices for Care regulations:
Choices_for_Care_Regulations_2020.pdf (vermont.gov)

Choices for Care manual:
_Merged CFC_High_Highest_Manual.pdf (vermont.gov)

Traumatic Brain Injury Program manual:
https://asd.vermont.gov/sites/asd/files/documents/Merged_TBI_Manual.pdf

ASD memos and policies:
https://asd.vermont.gov/resources/guidance-memos

Choices for Care Case Management Standards:
Microsoft Word - Case Management Standards Final June 2009 _Technical Edit 1_.rtf (vermont.gov)

CMS HCBS quality framework:
Reframing Approaches to Quality Management in HCBS From the Individual's Perspective - January 2021
Quality in HCBS Authorities, Part 1 - January 2017