

FREQUENTLY ASKED QUESTIONS
DEVELOPMENTAL DISABILITIES SERVICES
APRIL 3, 2020

DAIL received a letter from the Vermont Developmental Disabilities Council on March 22, 2020, with recommendations about how the developmental disabilities services system should operate moving forward into the next phase of responding to COVID-19. On March 27, 2020, DAIL received a letter from the Disability Law Project at Vermont Legal Aid with recommendations regarding the most urgent needs of the developmental disabilities services system during this emergency. In light of the overlap in recommendations and comments from these organizations, DAIL has compiled its complete set of responses into a “Frequently Asked Questions” format.

Q.1. A common message has been that “only older people and people with underlying medical conditions will become seriously ill.” Will the State agree to issue direct communication in plain language for self-advocates and family caregivers, to include information as to what to expect in terms of services and supports during the COVID-19 crisis?

A.1. The Developmental Disabilities Services Division (DDSD) is planning to work with agencies to support the communication of this guidance to individuals. A bulletin will contain, among other things, information regarding temporary changes in rules and/or policy, as well as available resources.

Q.2. Will the State create plain language documents and develop other accessible communication methods for individuals who do not use written language to explain protocols and guidelines?

A.2. DDSD has distributed plain language documents regarding COVID-19 (e.g., “Tips for Working with Support Staff during COVID-19”; “Green Mountain Guide for Emergency Planning”; “What’s Going On” simplified story with AAC icons about COVID-19).

Q3. Will the Governor and the Vermont Department of Health (VDH) communicate to the public the expectation that healthcare providers will not discriminate based on age or disability status, that any policy for resource deployment will be based on objective medical criteria that do not intentionally or inadvertently lead to people with disabilities or older adults being disproportionately denied testing or treatment, and that if, in the worst-case scenario, treatment is rationed, protocols must be transparent?

A.3. DAIL staff is planning to support this messaging. DAIL is aware that Vermont Legal Aid has sent communication about prioritization of hospital care, equipment and resources directly to the VDH, which is responsible for hospitals and their care planning guidance, and we will support VDH in its direction to hospitals in those areas. In addition, DAIL will continue to plan for and expect all state-funded medical services and long-term services and supports to be available based on individuals' assessed needs and not based on age or disability. While there may be forces outside of the control of DAIL that could influence access to treatment, the Department will continue to advocate for equal access for all Vermonters.

Q.4. Because Medicaid Due Process requirements are still in place and include the requirement to provide written notice to beneficiaries prior to reductions and terminations of services, will the State document and share with consumers, self-advocates and other stakeholders, the method in which determinations of essential and non-essential services have been or will be made so as to ensure a fully transparent and accessible process?

A.4. DDSD Quality Reviewers are working with agencies to ensure proper notice is provided when required. In response to the reference to "reductions and terminations of services," please note that DDSD has directed agencies to not suspend or reduce budgets due to unavailability of workers as a result of the VT COVID-19 State of Emergency, and in furtherance of the Governor's Executive Order, to keep services active, with a priority focus on the health and safety and the availability of essential workers. While the funding in individuals' budgets has not changed, individuals may, for example, receive Respite instead of Community Supports or get fewer hours due to unavoidable loss of direct support workers.

Agencies are working with individuals and their teams to meet individuals' needs in alternative ways. It is expected that services will be planned with an individual and their guardian to determine the best viable options. Agencies can decide what they are able to support related to health and safety and employee capacity.

Agencies must support individuals and guardians with information to understand the risks involved and what they are doing to mitigate the risks. Individuals receiving services and/or their guardians may then make their own decisions as to their own actions and must be afforded the opportunity to grieve or appeal the agency decision if there is a significant disagreement as to available supports.

Q.5. Will the State include contact information and referral to [Vermont Legal Aid's] Disability Law Project for legal advice in all written notices regarding the reduction or termination of any services?

A.5. When an individual or their representative does not agree with a decision regarding a reduction in, or termination of, services, a notice of decision, including their rights and contact information for Vermont Legal Aid, will be provided.

Q.6. Will the State direct agencies to require their staff to conduct phone/video conference checks with every person supported in DLTSS at least twice per week during this emergency, and require that one of these contacts be with the individual's service coordinator? Will the State advise that these "telehealth" calls are Medicaid reimbursable with appropriate permissions?

A.6. DDS has communicated to agencies that they need to continue to check in with individuals via phone or video conferencing. The frequency of the check-ins would be based on individuals' specific health and safety needs.

As per the "COVID-19 Frequently Asked Questions and Guidance to Designated Agencies":

DDS is temporarily lifting the face-to-face home visit requirement except when determined necessary to assure an individual's health and safety. A "home visit" may be performed using remote communication such as Zoom, Skype, Facetime or the phone, with an emphasis on assuring the health and safety of individuals served and communication that is accessible to the individual and/or their guardian. Now that everyone has been ordered to stay home and stay safe, these check-ins by the service coordinator must happen at least weekly. Check-ins may need to happen more frequently depending on the individual situation; this is a decision that needs to be made by the individual and his/her support team, including the guardian.

DVHA's memo, dated March 18, 2020, provided details about Medicaid payments for telephonic services furnished during the Emergency response to COVID-19.

Q.7. During these checks, will agency staff ask about the individual's health and emotional status, answer questions about the virus, and check to make sure that the individual has food and other necessities? In addition, will agency staff use the plain language guide to COVID-19, created by GMSA, to reinforce messages about hand-washing and social distancing and check on the health status and well-being of family caregivers, as well as those whose only service is targeted case management?

A.7. DDSD sent out to the distribution list from DDSD and DAIL the *Plain Language Tips for Working with Support Staff During COVID-19* created by GMSA. DDSD Quality Review staff and public guardians are working regularly with agencies around how providers can best keep individuals informed about COVID-19 and how the agencies will continue to support individuals and help them stay safe. DDSD staff are providing guidance and technical assistance to agencies on how to be flexible and responsive in the provision of services and supports to help assure individuals served, families, agency staff and contracted workers are as safe as possible.

Q.8. Will the State announce an expedited appeal process if an individual or a family caregiver feels that services have been discontinued inappropriately (e.g., deemed "non-essential"), thereby compromising the health and safety of the service recipient?

A.8. Temporary changes to an individual's services may be necessary to comply with the Governor's Executive Order concerning the delivery of "essential services." As noted in A.4., agencies are working with individuals and their teams to meet individuals' needs in alternative ways. It is expected that services will be planned with an individual and their guardian to determine the best viable options. The agency can decide what they're able to support related to health and safety and employee capacity. The agency must support individuals and guardians with information to understand the risks involved and what they are doing to mitigate the risks. Individuals receiving services and/or their guardians may then make their own decisions as to their own actions and must be afforded the opportunity to grieve or appeal the agency decision if there is a significant disagreement as to available supports.

When an individual is aggrieved by such a decision, they may exercise their rights as set forth in the notice provided to them. While an individual does not have a right to continuing benefits during an appeal challenging a decision to deem services “non-essential” in compliance with the Governor’s Executive Order, one has a right to request an expedited appeal. If such a request is made, the Medicaid program is required to apply established criteria to determine whether to grant an expedited appeal or to schedule an appeal in accordance with standard timelines and to notify the individual of the decision. The State will continue to follow this process during the COVID-19 emergency.

- Q.9. Will the State give resources (e.g., masks or thermometers) to workers providing certain supports that must be delivered in close proximity to the individual with a disability (e.g., medication management, clinical and nursing supports, assistance with feeding, daily living supports, assistance with maintaining a sanitary living space, and “ensuring human contact”) to ensure they do not become infected or infect others? More specifically, will the State work to encourage full disclosure by care providers when they have been exposed or suspect that they are sick and communicate these requirements consistently across all agencies to home providers, service recipients, and family caregivers?

A.9. Agencies require staff, shared living providers and contracted workers to report to the agency if they become ill, if they have been tested for COVID-19, and the results of the test. Agencies request the same information from families. Agencies are required to report this information (non-identifiably) by category (i.e., staff, shared living provider, other contracted worker, family member) to DDS. DDS Quality Reviewers request this information from each agency once a week in addition to receiving Critical Incident Reports. DDS agrees that it is important to let individuals know if they are living with someone who has become ill and/or has tested positive for COVID-19. Agencies are expected to notify an individual or their guardian if the individual is living with someone who has become ill and/or has tested positive for COVID-19.

Agencies may request Personal Protective Equipment for staff from the VT Department of Health. Agencies have been instructed to identify themselves as long term care providers when they request equipment. See question #13 below.

- Q.10. Will the State publish mandatory protocols for shared living providers and staff to immediately report to designated agencies and specialized service agencies exposure to COVID-19, development of symptoms of the illness, or exposure to a person with symptoms of the illness?

A.10. See A.9. regarding requirements for agency reporting.

Q.11. Will the State establish clear guidelines to identify what sanitation, social distancing, or self-quarantine practices must be employed (rather than recommended), and guidelines for when a consumer must leave a home due to COVID-19 exposure or symptoms of the illness?

A.11. DDS has issued home support guidance regarding COVID-19. DDS has requested that plans be developed for all individuals in the event of an illness or positive test for COVID-19.

Q.12. Will the State use current flexibility in Medicaid rules to ensure that individuals who prefer to have a family member provide their necessary supports during this emergency can afford to do so?

A.12. DDS is committed to providing crisis relief to families and is working with AHS on a plan to support parents.

Q.13. Will the Department of Health give home care workers and direct support professionals the same level of priority for testing and personal protective equipment that is given to healthcare workers in institutional settings and hospitals (e.g., priority access to testing, expedited testing results, and an epidemiological approach to follow-up when a homecare provider tests positive)?

A.13. DAIL has inquired about testing for community based LTSS workers. Currently, individuals in long-term care are prioritized for testing. Although that typically means residential care facilities, we have worked with VDH to help them understand that LTC also happens in the community. New aggressive testing protocols are enabling the State to test far more people, and primary care providers have been instructed to order tests for people with mild symptoms, which is a significant change. It is still not a priority to test people who are asymptomatic.

DAIL recognizes the critical need for agencies to have access to Personal Protective Equipment (PPE). Currently, the State of Vermont PPE resources are prioritized across needs. DAIL will continue to advocate for access to testing and PPE and has recently worked with DMH to submit a specific order for equipment distribution for the DA/SSA system. We will continue to make this a priority.

Q.14. Will the State make additional respite funds available to designated and specialized service agencies and clearly communicate to home providers and family caregivers that this pool of funding is available and that community support or job support hours can be converted to respite?

A.14. DDSD has issued guidance regarding shifting funding to critical services such as respite during the COVID-19 State of Emergency.

Q.15. Will Medicaid funds be temporarily available to pay family members, including parents, when an individual chooses to have their services delivered by a relative or when workforce shortages make it necessary for a family member to provide essential services? And, in such cases, will background checks and training requirements be expedited or waived?

A.15. See A.12. above. DDSD is committed to providing crisis relief to families and is working with AHS on a plan to support parents.

Q.16. The direct care workforce and our system of community agencies may be stressed to a breaking point if the crisis continues for as long as expected. Some individuals and families will want workers to stay away -- even in the case of essential services - because of the fear that a worker will introduce the virus into the household. Other direct care workers will not be able to work because of childcare needs or the illness of a family member.

Will the State authorize payment for DLTSS when those services go unused because the individual in services declines services due to COVID-19, even if federal matching funds, that would otherwise apply, are not available, in order to sustain these providers and enable them to continue providing services both during and after COVID-19 in Vermont? Will the State authorize payments for unused service hours when the cause of underutilization is related to COVID-19, including payments to workers who are hired directly by families using a self- and family-managed care model? And will the State provide community agencies additional funds for respite for families for whom this would be helpful, including families with children with disabilities supported by the very modest Flexible Family Funding?

A.16. See A.12. and A.14. DDSD has issued guidance regarding shifting funding to critical services such as respite during the COVID-19 State of Emergency. Further, DDSD is committed to providing crisis relief to families and is working with AHS on a plan on how

we can support parents. Finally, AHS has outreached to DAs and SSAs regarding financial relief that may be necessary in addition to flexibility within currently available funding.

Q.17. Rather than requiring individuals to deplete community support or employment support budget line items to address increased need for housing supports or respite, will the State make funds available to increase individual budgets to address these changed needs, which will allow consumers to return to community and employment activities with necessary supports as soon as it is safe to do so?

A.17. DDSD is not suspending or reducing budgets and has issued guidance regarding shifting funding to critical services, such as respite, during the COVID-19 State of Emergency.

Q.18. Will the State commit to not move individuals who must leave an SLP or staffed apartment to a more restrictive institutional setting (e.g. residential care home or assisted living facility) where the risk of acquiring COVID-19 is high due to the congregate nature of the setting?

A.18. Both DAIL and agencies are strongly committed to people being supported to stay in their homes. If a person cannot stay in their current home due to illness or lack of adequate supports, DDSD will work with agencies to do what is possible to find a safe, alternative, individualized setting where the person will receive the necessary supports. In the event an individual becomes too ill to remain in their home but does not require hospitalization, efforts are underway to create regional and statewide surge sites. In all circumstances, the level of support provided would depend upon the individual's situation, the severity of illness and the availability of direct supports.

Q.19. Will the State create a Safe Harbor so that an agreement for changes in services during the emergency does not result in re-assessment of need and reduction in services after COVID-19?

A.19. Please note the response in A.4. regarding DDSD's direction to agencies to not suspend or reduce budgets due to the COVID-19 crisis.