



REPORT TO THE VERMONT LEGISLATURE

Agency of Human Services

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DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING (DAIL)

Oversight of services for individuals with developmental disabilities (second of two reports)

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

Submitted by: Monica White
Commissioner

Prepared by: Bard Hill
Principal Assistant

Report Date: January 15, 2023

LEGISLATIVE REQUEST

This report is the second report submitted to the legislature pursuant to Act 186 of 2022, as described in Section 3(b):

“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.

(b) On or before January 15, 2023, 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 develop an implementation plan that shall address the fiscal and workforce requirements for conducting a minimum of at least one annual on-site quality assurance and improvement visit by the Department to the designated and specialized service agencies and other providers serving individuals with developmental disabilities to address the quality of home- and community-based services, including health and safety, in accordance with personalized service plans for the individuals served.”

<https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT186/ACT186%20As%20Enacted.pdf>

EXECUTIVE SUMMARY

This report is the second of two reports submitted by the Department of Disabilities, Aging and Independent Living (DAIL) regarding quality assurance and oversight of home and community based services (HCBS) programs for individuals with developmental disabilities, pursuant to Act 186 of 2022 (hereafter, 'the Act').

This report includes information regarding the Developmental Disabilities HCBS program, 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.

The most recent Global Commitment Medicaid Waiver agreement with federal Centers for Medicare and Medicaid Services (CMS), effective July 2022, includes special terms and conditions that change and increase Vermont's HCBS quality management obligations. As described in the first legislative report submitted November 15, 2022, discussions between the Agency of Human Services and CMS regarding the future details of quality management for Vermont's HCBS programs are ongoing. While incomplete, these discussions will directly shape the future of Vermont's HCBS quality management activities and are expected to include timelines for implementation of changes. It is important to note that people receiving HCBS, stakeholders, and partners are also interested in the future direction of DAIL's HCBS quality management work.

Section 3(b) of the Act directs DAIL to "address the fiscal and workforce requirements for conducting a minimum of at least one annual on-site quality assurance and improvement visit by the Department to the designated and specialized service agencies and other providers serving individuals with developmental disabilities to address the quality of home- and community-based services, including health and safety, in accordance with personalized service plans for the individuals served." As stated in the first legislative report, Vermont should expect greater clarity and direction from CMS in the coming months, and DAIL recommends that future modifications in quality management and oversight be founded on that future clarity and direction. The first legislative report also included a recommendation that DAIL engage an independent contractor to review DAIL quality management activities in the context of prevailing national CMS expectations and practices regarding HCBS quality management, and to make recommendations for modifications and improvements based on this review. AHS and DAIL are engaged in discussions with a potential contractor with a goal of producing written results in a short timeframe of approximately six months. AHS and DAIL expect a scope of work and estimated costs from the contractor by the end of January 2023.

Addressing a specific directive in the Act, DAIL estimates that annual quality oversight visits to every provider agency would require an additional nineteen (19) DAIL staff positions at an annual cost of approximately \$1,982,815, noting that recruitment and onboarding staff would require approximately six months. Due to ongoing discussions with CMS regarding HCBS quality management obligations, this report does not include an implementation plan. DAIL will continue with current operations for quality management and oversight as delineated in our November 15, 2022 report, and recommends that changes in quality management and oversight of Vermont's HCBS programs be based on clear direction from CMS, which remains pending as of the date of this report.

INTRODUCTION

This report is the second of two reports submitted by the Department of Disabilities, Aging and Independent Living (DAIL) regarding quality assurance and oversight of home and community based services (HCBS) programs for individuals with developmental disabilities, pursuant to Act 186 of 2022.

In addition to information regarding the Developmental Disabilities HCBS program, this report 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.

The most recent Global Commitment Medicaid Waiver agreement with federal Centers for Medicare and Medicaid Services (CMS), effective July 2022, includes special terms and conditions that change and increase Vermont's HCBS quality management obligations. As described in the first legislative report submitted November 15, 2022, discussions between the Agency of Human Services and CMS regarding the future details of quality management for Vermont's HCBS programs are ongoing. While incomplete, these discussions will directly shape the future of Vermont's HCBS quality management activities and are expected to include timelines for implementation of such changes.

It is important to note that people receiving HCBS, stakeholders, and partners are interested in and will be affected by the future direction of DAIL's HCBS quality management activities.

CONTENT

1. Scope of programs:

The Act defines the scope of programs included in 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 also

serve some people with developmental disabilities. Therefore, all three DAIL HCBS programs are addressed in this report.

2. Independent review of DAIL quality management activities:

The first legislative report included a recommendation that DAIL engage 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. AHS and DAIL are engaged in discussions with an independent contractor with the goal of producing written results in approximately six months. AHS and DAIL expect a scope of work and estimated costs from the contractor by the end of January 2023.

3. Conflict-free HCBS case management:

In compliance with federal regulations AHS has begun to design and implement conflict-free case management in all five of Vermont's Medicaid HCBS programs. The implementation of conflict-free case management will insert a new independent entity in the oversight of HCBS services, representing a third element of independent monitoring and oversight of the HCBS services provided to individuals. The implementation of conflict-free HCBS case management is anticipated to be complete by December 2025.

Independent HCBS case management entities will themselves require external quality monitoring and oversight in the future. This will represent an additional increase in DAIL quality management responsibilities, which is not addressed in this report due to the incomplete status of the design and implementation of conflict-free HCBS case management.

4. Fiscal and workforce requirements for annual on-site visits:

The Act directs DAIL to address the fiscal and workforce requirements for conducting a minimum of at least one annual on-site quality assurance and improvement visit to providers that provide services to people with developmental disabilities. DAIL estimates that this would require an increase of 19 FTE positions with annual costs of approximately \$1,982,815, noting that recruiting and onboarding staff would require approximately six months.

Appendix A provides more detail regarding staff positions and costs required to perform annual on-site quality review visits to DAIL provider entities.

This increase in staff positions would provide DAIL with the ability to perform annual on-site reviews of each provider agency, including interviews/visits with a sample of people who are served, as well as the ability to manage associated remediation activities (including provider Plans of Corrective Action) and quality improvement activities (including training and technical assistance). For the sake of clarity, we note that this increase in staffing would be adequate to support interviews/visits to a sample of the people served by each agency, but would not be adequate to support interviews/visits to every person who is served.

RECOMMENDATIONS

DAIL recommends that changes and improvement in HCBS quality management activities be based on clear direction from CMS. To expedite planning, AHS and DAIL are engaged in discussions with an independent contractor with the goal of producing written direction regarding compliance in quality management activities for each Vermont HCBS program in approximately six months. Because discussions with CMS regarding HCBS quality management obligations have not concluded, this report does not include an implementation plan to address the fiscal and workforce requirements for conducting a minimum of at least one annual on-site quality assurance and improvement visit to provider entities.

DAIL recommends that changes in quality management and oversight of Vermont's HCBS programs, including increases in DAIL staff to manage these changes, not be designed or implemented until after the State of Vermont receives adequate clarity and direction from CMS. This approach will help to ensure the appropriate and effective use of State resources. DAIL anticipates that the State of Vermont will receive adequate clarity and direction from CMS in cy2023.

APPENDIX A

Table 1: Fiscal and workforce requirements for conducting a minimum of at least one annual on-site quality assurance and improvement visit to each provider

This table summarizes the fiscal and workforce requirements necessary to support annual quality assurance and improvement visits to each provider by DAIL staff.

	DAIL Division of Licensing and Protection (DLP) Survey and Certification (licensed providers)	DAIL Adult Services Division (Choices for Care (CFC) and Brain Injury Program (BIP) providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
Number of people served in HCBS programs:			
	N/A <i>Note licensed capacity of 6,920 people in residential settings, included in provider description below.</i>	2,294 (as of July 2021) <i>Includes 82 people in BIP. Does not include 551 people in CFC Enhanced Residential Care, 1,085 people in CFC moderate needs group.</i>	3,281 (sfy21 total undup.) <i>Does not include 977 people in flexible family funding, 243 people in family managed respite, and 382 people in Bridge program.</i>
Numbers of providers:			
Number of provider entities/agencies by Division and HCBS program	256 providers, including 197 licensed nursing and residential facilities with 6,920 licensed beds: <ul style="list-style-type: none"> • Skilled Nursing Facilities: 38 (2,980 beds) • Residential Care Homes: 102 (2,376 beds) • Assisted Living Facilities: 16 (1,092 beds) • Therapeutic Community Residences: 40 (451 beds) • Home for the Terminally III: 1 (21 beds) • Home Health Agencies: 11 • Hospice agencies (separate from home health agency reviews): 11 • Hospitals: 16 • Ambulatory surgical centers: 2 	<ul style="list-style-type: none"> • 51 providers: • CFC Case Management providers: 14 (5 AAA, 9 HHA) • CFC Adult Family Care provider agencies: 14 • <i>Sept 2022 Contracted Adult Family Care homes: 207 homes, 243 residents (including 15 with ID/DD)</i> • Transition II: 1 • Adult Day providers: 11 • ARIS (fiscal employer agent for independent employers and workers): 1 • Brain Injury Providers: 10 (does not include 3 reviewed by DLP) <i>ASD staff perform no quality reviews of these providers:</i> 	15 providers, not including Transition II: <ul style="list-style-type: none"> • Designated Agencies (DAs): 10 • Specialized Services Agencies: 5 • Transition II: 1 • <i>September 2022 Contracted Shared Living Provider homes: 1,250 homes, 1,360 residents with ID/DD</i> • <i>ARIS (fiscal employer agent for independent employers and workers): 1, overseen by ASD</i>

	DAIL Division of Licensing and Protection (DLP) Survey and Certification (licensed providers)	DAIL Adult Services Division (Choices for Care (CFC) and Brain Injury Program (BIP) providers)	DAIL Developmental Services Division (Designated Agencies and Specialized Service Agencies)
	<ul style="list-style-type: none"> • End stage renal disease centers: 8 • Rural health clinics:10 • Mobile x-ray (every 5 years): 1 	<ul style="list-style-type: none"> • <i>Skilled Nursing Facilities</i> • <i>Residential Care Homes</i> • <i>Assisted Living Facilities</i> • <i>Therapeutic Care Residences</i> • <i>Home Health Agencies (except for case management)</i> • <i>Other provider agencies paid under 'Flexible Choices'</i> 	
Current frequency of DAIL quality reviews of providers:			
	Every 1-3 years. State licensed facilities will receive annual visits in sfy23 due to an increased staffing appropriation in the sfy23 DAIL budget.	Every 3-4 years. Some reviews do not include on-site activities.	Every 2 years. Reviews include on-site activities.
Current number of DAIL quality review staff:			
	26 FTE positions	5.5 FTE positions	5.3 FTE positions
Additional staff and costs to perform annual on-site quality review visits to all HCBS providers:			
FTE positions	0	8 FTE positions	11 FTE positions
Est. annual cost	\$0	\$861,168	\$1,121,647

Table 2: Detail: Estimated DAIL positions and costs to perform annual provider agency visits, by division

Estimated DAIL positions and costs necessary to perform annual visits:

<u>Division</u>	<u># FTE</u>	<u>Position title</u>	<u>PG</u>	<u>Step</u>	<u>Salary</u>	<u>Benefits</u>	<u>TOTAL:</u>	<u>State (50%)</u>	<u>Federal (50%)</u>
DDSD	5	Quality Management Reviewer	24	2	\$57,616	\$40,269	\$489,425	\$244,713	\$244,713
DDSD	1	Quality Management Team Lead	26	2	\$64,854	\$42,792	\$107,646	\$53,823	\$53,823
DDSD	1	Nurse Surveyor	25	2	\$85,496	\$49,910	\$135,406	\$67,703	\$67,703
DDSD	1	Training Specialist	25	2	\$61,069	\$41,519	\$102,588	\$51,294	\$51,294
DDSD	2	Program Tech III	22	2	\$51,293	\$38,161	\$178,908	\$89,454	\$89,454
DDSD	1	Senior Auditor and Program Consultant	26	2	\$64,854	\$42,820	\$107,674	\$53,837	\$53,837
subtotal	11				\$385,182	\$255,471	\$1,121,647	\$560,824	\$560,824
ASD	5	Quality and Program Participant Specialist	26	2	\$64,854	\$42,792	\$538,230	\$269,115	\$269,115
ASD	2	DAIL Quality Outcomes Specialist	26	2	\$64,854	\$42,792	\$215,292	\$107,646	\$107,646
ASD	1	Senior Program Consultant	26	2	\$64,854	\$42,792	\$107,646	\$53,823	\$53,823
subtotal	8				\$194,562	\$128,376	\$861,168	\$430,584	\$430,584
TOTAL	19				\$579,744	\$383,847	\$1,982,815	\$991,408	\$991,408

APPENDIX B

Links to related materials:

First Act 186 quality report (November 15, 2022):

[Oversight of services for individuals with developmental disabilities](#)

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