

7-12-19 SDAN Comments

Amendment #2 and CPW Effective 7-1-2019

All page # references related to the CPW Tracked changes Documents

Appendix A and Main –

Page 27: The December 1, 2019, pilot to test new services and LTSS functionality is only seven months from the actual implementation of the LTSS system-wide. SDAN is concerned that this is not enough time to work out all the kinks in the system, especially when throwing in the additional complication of bringing on a new FMS provider for those self-directing their services. SDAN strongly recommends that the new FMS provider NOT be onboard until well after the LTSS has been proven successful, but not before September 1, 2020.

DDA has initiated many changes in the past year, many of which are still not working as intended. A large number of SDS PCPs could not be submitted via LTSS this year when due and the SDS budget form is still not flexible enough to correctly reflect individual budget line items so that the FMSes can accurately pay expenditures. Many plans have not yet been approved by DDA, forcing the FMSes to be paying for services based on FY2019 plans. The system is strained to the max so any additional changes, prior to the correction of the already-existing issues and full nearly flawless implementation of these new changes, should be postponed.

Appendix C --

C-1/C-3: Service Specification -- Provider Qualifications:

In each service definition for which participant direction is an option, there should be NO requirement that any provider must submit a “DDA provider application.”

CMS Technical Guidance regarding provider qualifications on page 129 states, “Provider qualifications and standards should not contain provisions that have the effect of limiting the number of providers by the inclusion of requirements unrelated to quality and effectiveness.” SDAN feels that any individual or entity capable of providing these services to the general population in Maryland should be able to provide services to individuals who self-direct their waiver services.

SDAN RECOMMENDATION: Clarify this language so the requirements for all providers in all services are clearly written to allow any provider qualified to provide the service in Maryland

to be able to provide the service to waiver participants regardless of whether they have submitted a DDA application or not.

Statements regarding qualifications and “DDA provider application” are included in at least the following services for which SDS participants have employer and/or budget authority: Assistive Technology, Behavioral Support Services, Community Development Services, Day Habilitation (but since it is a licensed provider agency service, the requirement is acceptable in this instance), Employment Discovery and Customization, Employment Services, Environmental Assessment, Environmental Modifications, Family and Peer Mentoring Supports, Family Caregiver Training and Empowerment, Housing Support Services, Live-in Caregiver Supports, Nurse Consultation, Nurse Health Case Management, Nurse Case Management and Delegation Services, Participant Education and Training, Personal Supports, Remote Services, Respite Care Services, Support Broker Services, Support Living, Supported Employment, Transportation, and Vehicle Modifications.

For many occupations, such as nursing and Behavior Analyst, the state of Maryland has set up stringent certifications and/or licenses. Since DDA is a state agency, those should suffice.

Transportation – General Comments:

Per CMS HCBS Technical Guidelines, states are not required to include transportation expenses embedded in the waiver service. Since a SDS participant’s transportation supports are needed for many waiver services and outside of waiver services for the participant to be involved in all aspects of a typical life, artificially dividing up these supports to be pay from specific waiver categories is overly burdensome on the participants, their families, and their staff.

For self-direction, Transportation needs to be a stand-alone service for any and all transportation needs at any point in the day regardless of whether the participant is or is not receiving supports under another service at the time. The vast majority of individuals in self-direction cannot travel independently and will be supported by staff or family when utilizing any transportation service. The person who drives the participant wherever he/she needs to go, should be reimbursed for mileage from a stand-alone budget category.

Self-direction is not paid based on a rate as traditional providers are. Each individual support service, including Transportation, has its own reasonable and customary rate, while traditional providers are paid a “rate” that includes an allowance for the cost of transportation.

Transporting an adult child to community, vocational, and personal activities qualifies under CMS Guidelines as extraordinary. Family members who provide transportation to activities exclusively for the benefit of their adult children should be eligible for reimbursement at the IRS rate, regardless of whether they are also employees. In many cases, families have purchased

specialized vehicles for wheelchair transport. This vehicle is often used by staff since it is the only vehicle in which the participant can be transported safely. The family needs to be reimbursed for the use of this vehicle. The provision of Transportation services to an adult child are not the responsibility of a legal guardian, who may be legally responsible for the individual, but not financially responsible to pay for any and expenses incurred for the support of the individual.

SDAN Recommendation: Return all transportation services to a standalone category for Self-Direction.

Check Legally Responsible Person and Legal Guardian as people who can be paid for this service.

Provider Qualifications: [REMOVE: Individual must complete the DDA provider application]

Community Development Services:

Settings General Comments: According to CMS Medicaid Home and Community-Based Services (HCBS) Taxonomy Category and Subcategory Definitions, on page 4, Subcategory 04070, which is how this service is labeled on the current waiver, “**can include supports furnished in the person’s residence related to community participation.**”[emphasis added]

SDAN contends the volunteer activities that are done for community entities to which the participant is connected and visits out in the community, meets this definition. Therefore, CDS services should be able to be conducted in the participants’ homes when they have health and other reasons for being unable to be out in the community for the entirety of the time when these volunteer activities are being completed. CDS services in the home should also be available to support individuals who pursue home-based, cottage-industry-type self-employment that may not create a competitive income for the participant, but that serve as getting the participant involved with their community by virtue of providing these services or products and causes their interaction with the community as part of these endeavors.

SDAN Recommendations:

1. **Page 19:** Service Definition B, **add** “in home or in the community” to #5. **Add #6.** Engaging in self-employment and/or hobby activities in the home that result in engagement with community members outside the home at other times.
2. **Page 19,** Service Requirement B: **Add** “, including the participant’s home” at the end of the sentence. **Remove:** “with the exception of disability specific classes, activities, events, or programs.” This restriction is not required by CMS and is not in keeping with the idea of

person-centered supports. In many cases, it will eliminate activities that actively involved ensuring individuals ARE included, such as Special Olympics.

ADD: Transportation services will be a stand-alone service that can be used in conjunction with any other service available to self-directing participants.

3. Page 20, Modify Service Requirement J as follows: “[**Add** Except for participants receiving this service via Participant-Directed Services], transportation to and from and within this service is included within the Community Development Services. The mode of transportation which achieves the least costly, and most appropriate means of transportation for the participant with priority given to the use of public transportation when appropriate. Transportation will be provided or arranged by the licensed provider [**remove** “or self-directed participant”] and funded through the rate system. [**Remove** “or the Community Development Services self-directed service budget”]. **Add:** Transportation will be a standalone service for in budgets for participants who self-direct. **SDAN makes this same recommendation for any service under which individuals have employer authority and would be paying mileage reimbursements to their employees or utilizing transportation supports such as taxi services or public transportation services.**

SDAN Recommendations:

Service Requirement B. For participants self-directing their services, []

Employment Discovery & Customization: Page 48

SDAN’s Recommendation: Ensure that these services have Employment Authority so that self-directing participants are able to hire an employee with the required certifications to provide this service rather than be required to only receive these services through a licensed provider.

Employment Services:

Page 53: The title section indicates the service will start December 1, 2019, but under Service Definition it indicates it will start December 1, 2020. Which is correct?

Page 56: Limitations – SDAN Recommendations

3. Job Development and Ongoing Job Support services, especially when combined with other meaningful day services, should not be limited to 40 hours per week. It is conceivable that an individual would need job supports for 40 or more hours a week (some people do work overtime)

and then need Community Development Services for recreation and other community integration opportunities. The cap seems arbitrary, unnecessary, and not person-centered.

4. Eliminate this limitation, especially if the 40 hour cap in #3 is maintained. It is conceivable that an individual could need Ongoing Job Support for more than 10 hours per day, even if unlikely. An individual should not need to seek a special exception from DDA in order to get the services needed for his/her job.

Individual and Family Directed Good and Services

Page 87: D.7. IFDGS was expanded to include therapeutic interventions, including art, music, etc.; As included in this waiver and amendment, these services are included in Category 17-- Other Services, Subcategory 17010 – Goods & Services. Maryland has chosen to make this category capped at \$5000 for the year and stressed that these supports can only be provided by “savings” generated from other areas on the plan; i.e., as in reducing the number of support hours so that some funds can be diverted to needs in this area.

SDAN recommends that these services, as therapies, more appropriately belong in CMS Category 11: Other Health and Therapeutic Services. In this category, they should not be capped nor only provided when individuals are forced to locate savings in other areas of need.

Live-In Caregiver Supports – Page 90:

Payment of these services seem to be only to an agency. However, it seems that the likely recipient of these payments would be the landlord renting an apartment (difference between one bedroom and two bedroom) and the live-in caregiver (cost of food).

SDAN Recommendation: Alter the service providers/recipient of payment to address self-directing participants who live in their own home with supports from an unpaid live-in caregiver.

Personal Supports (starting on Page 120):

Definition & Limitations: According to CMS Medicaid Home and Community-Based Services (HCBS) Taxonomy Category and Subcategory Definitions , on page 7, Subcategory 08010, home-based habilitation is: *Assistance in acquiring, retaining, and improving self-help, socialization, and/or adaptive skills provided in the person’s home when the provider [in the case of self-direction, the directly hired employee of the participant] does NOT have round-the-clock responsibility for the person’s health and welfare. This service can include supports*

offered in community integration, home health aid, personal care, companion, and homemaker if these supports are provided along with assistance in acquiring, retaining and improving self-help, socialization, and/or adaptive skills. CMS Technical Guidance for habilitation supports provided in a person’s home states it “**also includes personal care and protective oversight and supervision.**” [emphasis added]

SDAN continues to be concerned that the current definition and DDA’s interpretation of the definition, as is now being implemented in regional offices, too narrowly defines habilitation supports. Specifically we are concerned with the elimination of overnight supports, which are putting the health and safety of many participants at risk.

SDAN Recommendation: Work with DRM to rewrite the definition of Personal Supports that accommodates the needs of waiver participants.

SDAN Recommendation Page 121: Reword Service Requirement F to read: Personal Supports are available at any time needed by the participant when not receiving under another service definition or another non-DDA provider, such as DORS or school.

SDAN Recommendation Page 122: Remove Service Requirement J – For some participants for some parts of time of service, the supports may “comprise the entirety of the service.” This is part of the narrow application of the definition of personal supports to which SDAN objects. CMS seems to recognize in its definition of this service that there will be times of just personal care, and that is allowed. DDA’s recent push to get people properly served under this waiver into CFC services is misguided and has proven unhealthy and unsafe for many waiver participants and NOT a requirements from CMS.

SDAN Recommendation Page 122: Service Requirement Q -- Remove the added language: “with the exception of disability specific classes, activities, events, or programs.” This restriction is not required by CMS and is not in keeping with the idea of person-centered supports. In many cases, it will eliminate activities that actively involved ensuring individuals ARE included, such as Special Olympics.

Limitations: Amendment 1 to the immediately preceding CPW waiver, eliminated self-direction from the 82 hours a week limitation on personal support hours. Self-Directing participants should NOT have such a cap on their supports.

The 82 hours cap, coupled with the 40 hour cap on Meaningful Day Services, leaves a gap in available supports of 46 hours each week. Individuals in self-direction need to have the same support coverage options as individuals receiving services from traditional providers. Some individuals with intense needs require round the clock care to maintain health and safety. These supports should be available based on documented needs, not restricted by artificial hourly limits

SDAN Recommendation: ADD “With the exception of individuals self-directing their services,” to #2 under the “Specify applicable (if any) limits on the amount, frequency, or duration of this service.”

Regarding Personal Supports in general:

1. There does not seem to be any definition or mention of the new “enhanced personal supports” category discussed in the Main/Appendix A section of the waiver changes. It seems like it should be part of the definition in this section of the waiver as well (much like additions to Shared Living) not just in the changes section and Appendix F with the additional payment rate.

Shared Living (beginning on Page 145):

Ability to Self-Direct: If the restriction to have all self-directed or all traditional supports is not lifted from the waiver, then individuals who self-direct their services will be denied this service option since it is not checked as a service that can be self-directed.

SDAN Recommendation: Check this service as one available for budget authority under self-direction and remove the requirement that the host family/home be located and paid through a licensed provider.

Expansion of Service: SDAN continues to contend that family members, other than parents, should be able to provide this service. It is important for the health and safety of the participant that they be able to receive these supports in all viable homes. Homes of family members are often the best homes for participants. Any and all options to support a family member in taking on the responsibilities of caring for a relative with a disability should be encouraged and supported by DDA. This kind of stipend may be all that is needed to make it feasible for family-member support. SDAN contends that these extended family members may be willing to provide supports for less than the currently suggested stipend included in Appendix J, which could result in considerable savings to the State with a more secure and permanent provider.

SDAN Recommendations:

Page 146. Service Requirement A. [ADD: OR services provided in the home of a non-parent family home (such as, but not limited to, a sibling or cousin) that has been freely selected by the participant to serve as his/her “host home.”]

Page 148. Service Requirement I. [REMOVE: Participant does not have family or relative supports.] The only criteria should be the participant chooses this living option. As written it seems to imply that if an individual has family, that family is expected to provide services for free whether they are able to or not; and, whether or not the individual wants to live with family members or not that he/she cannot access this option.

Page 149. Service Requirement O. REVISE to read: As defined in Appendix C-2, an individual’s spouse or parent may not be paid either directly or indirectly to provide this service. [REMOVE references to legally responsible persons or legal guardians of adult participants and relatives.]

Page 149: Service Requirement R: Remove the added language: “with the exception of disability specific classes, activities, events, or programs.”

This restriction is not required by CMS and is not in keeping with the idea of person-centered supports. In many cases, it will eliminate activities that actively involved ensuring individuals ARE included, such as Special Olympics.

Support Broker Services (Starting on page 152):

On page 175 of the CMS Technical Guidance, when discussing supports brokerage, it states: *This service does not duplicate other waiver services, including case management.* On page 176, it goes on to state: *This service may include the performance of activities that nominally overlap the provision of case management services. In general, such overlap does not constitute duplicate provision of services. . . . Where the possibility of duplicate provision of services exists, the participant’s service plan should clearly delineate responsibilities for the performance of activities.*

SDAN contends that DDA has created the duplication of services by unnecessarily expanding the duties of Coordinators of Community Services (CCS). CCS workers were already overburdened with responsibilities with the need to know and understand many processes, service options, and procedures. Adding many of the duties previously performed by Support Brokers have attempted to fix something that wasn’t broken and has actually increased costs to the state. We believe that this expansion of duties has contributed to the high turnover rate of CCSes and the poor service performance of several CCS agencies in the state as reported by **many** self-directing participants. The current hourly rate paid to CCS agencies is at least \$77. the most Support Broker agencies charge is \$65/hour with most independent support brokers being paid much less. Moving these supports to CCSes instead of Support Brokers, who specialize in Self-Direction, is not fiscally responsible. It actually causes the state to pay more for an inferior service. In fact, this reduction in support broker duties has caused delays and inferior plans this year.

Consequently, we believe that the restrictions placed on Support Broker duties are not only detrimental to the success of participants in managing their program, but fiscally costly to the state. Support Brokers should clearly be able to assist with both employer authority and budget authority tasks. Such assistance should, based on participant’s choice and need, include

assuming responsibility for some of these tasks as outlined on the Participant Service Agreement discussed in our comments on Appendix E.

While many individuals need no more than four hours of supports each month, others routinely need much more. The number of hours needed for support brokerage under the original self-direction waiver was a minimum of 4 hours a month. This is similar to the recommendation from a work group tasked with working with a DDA contractor in the summer of 2017 regarding the number of hours needed for support broker services. Restricting the number of hours to four per month is not person centered. More supports are often needed for reasons other than changes in health needs.

SDAN Recommendations:

Page 152. Service Definition A. REVISE to read: Support Broker Services are employer authority and budget authority information, advice, and assistance provided to a participant and his/her family and team so that the participant/family/team are able to make informed decisions about what service design and delivery will work best for the participant, is consistent with the participant's needs, and reflects individual circumstances. The support broker also provides information, advice, and assistance with day-to-day management of the participant's self-direction plan.

Page 152. Service Definition B. REVISE to read: Information, coaching, mentoring, and assisting participant about and with: [List of Items remains the same]

Page 153. Service Definition C. ADD: Initial startup and plan development

Page 153. ADD Service Definition D: Assume responsibility for duties designated to the support broker by the participant/team as delineated on the Participant Services Agreement signed by all team members (See Appendix E).

Page 153. ADD Service Definition E: Support Brokerage differs significantly from Case Management or Resource Coordination in its intensity, frequency, level of detail and personal advocacy involved in the service.

Page 153. ADD Service Definition F: Support Broker can serve as the primary advocate for the individual in regard to self-directing his/her plan if requested to do so by the participant and the team.

Page 153. Service Requirement I: REVISE to read: Additional assistance, coaching, and mentoring may be authorized based on demonstrated need for plan supports for any reason, including changes in participant's health or medical conditions, staffing and support issues, or complexity of plan.

Supported Living (Starting on page 159):

In the event that the recommended changes are not made to the definitions of personal supports, another option to provide overnight supports would be to do so under the Supported Living category. However, the 02031 subcategory used in this definition is specified to be for a provider that has “round-the-clock responsibility for the person’s health and welfare.” This potentially could apply to self-direction IF the participant is considered the “provider.” In that case, Supported Living should include employer authority so that individuals can hire their own staff to provide this service rather than hire an agency.

SDAN Recommendation: The best option for the kind of 24/7 supports needed by many in self-direction is to utilize the CMS-allowed definition of personal supports as previously recommended in this document. If that recommendation is not accepted, then we suggest that the definition of supported living be modified in a way that allows individuals who self-direct to utilize this service with employment and budget authority.

Page 161: Service Requirement K: Remove “with the exception of disability specific classes, activities, events, or programs.”

This restriction is not required by CMS and is not in keeping with the idea of person-centered supports. In many cases, it will eliminate activities that actively involved ensuring individuals ARE included, such as Special Olympics.

Regarding Supported Living in general:

There does not seem to be any definition or mention of the new “enhanced supported living” category discussed in the Main/Appendix A section of the waiver changes. It seems like it should be part of the definition in this section of the waiver as well (much like additions to Shared Living) not just in the changes section and Appendix F with the additional payment rate.

Section C-2: Page 194 – Payment to Legally Responsible Person/Relative/Legal Guardian:

SDAN continues to believe that the listing of “CIRCUMSTANCES WHEN PAYMENT MAY BE MADE” in Sections C-2.d.(b) and C-2.e(b) are unclear and should be modified. Item 1. is the only requirement that should need to be met for one of the above listed individuals to work for a participant.

SDAN Recommendation: Wording in these sections should be changed to be clear that items 2. and 5. are either/or situations and both do not need to be true.

Appendix E:

Page 1 Independence Plus Designation: SDAN continues to be concerned about the loss of the Independence Plus designation and what that says about the direction of self-directed services in Maryland. Both the previous CPW and the original self-direction waiver in Maryland requested and received the Independence Plus designation. This has not been requested by DDA for the current waiver.

This designation was established by CMS to “recognize the state’s especially strong commitment to participant direction.” (page 191 CMS Guidelines) **It seems as if Maryland has taken a step backwards. This is a major concern to SDAN as the program was working better for its Participants before these changes.**

Page 1. E-1a. Description of Participant Direction: SDAN continues to be concerned about any situation in which a designated representative (DR) could be required. We will continue to work to ensure that the participant maintains control over his/her plan and budget through the use of Supported Decision Making via the team process. **With the support of their team, all individuals are able to make informed decisions.**

On page 199 of the CMS Technical Guidance it states: *CMS urges states not to impose restrictions based on assessment of “ability” or “capacity” that have the effect of denying opportunity to direct their services based on disability. States will also wish to consider the Olmstead implications of such exclusions.*

Self-direction has always been a team effort. **SDAN strongly believes that anyone can self-direct with the right supports.** The involvement of team members and their support to the participant has always been based on the support needs of the participant and his/her desire to have others assist with some of the tasks.

Page 3. E-1a(c) Support by Entities for Participants in the Self-Directed Service Model.

SDAN Recommends: Revise the section regarding support broker roles with wording to the effect of:

Support Broker services are offered as an optional services to participants who elect to self-direct their own services. Support Brokers provide assistance by mentoring and coaching the participant on his/her responsibilities as a common law employer related to staffing as per federal, State, and local law, regulations, and policies. Support broker services are designed to assist participants with the management of their day-to-day services and assist the individual to gain skills necessary to manage their own services. This can include all activities described in

Section C1/C3 of Appendix C in Support Broker Service Definitions B & C as designated or needed by the participant.

Support Brokers do not make any decisions for the participant/Employer of Record nor hire or fire workers.

Page 3. Revise the section regarding the FMS role: SDAN has made extensive comments regarding the role of the FMS and the availability of choice for participants regarding who can provide these services and participant control of services.

As allowed by CMS, FMS services can be a waiver service. Per page 177 of the CMS Technical Guidance, **“When financial management services are furnished as a waiver service, the number of providers may not be limited.”** [emphasis added] Therefore, DDA is not required to make the FMS an administrative service awarded via a bidding process to only a few (or one) company. The success of the participants’ self-direction program is directly tied to the quality of their FMS services. Slow turn-around time can impact a participant’s ability to hire and retain staff and to manage the budget. Allowing FMS services to fall under waiver services allows the participant to compare costs and quality of services offered by multiple FMS providers and to make a choice based on his or her needs. Those who receive services from traditional providers may choose from a variety of qualified providers for various services such as Day Habilitation, Supported Employment, etc., so SD participants should have that same option when it comes to their crucial FMS services.

SDAN Recommendation: Make Fiscal Management Services a waiver service to allow participant the choice from as many providers who wish to provide this service and eliminate providing a monopoly to one company as proposed by the current RFP.

Page 4. E-1 c. Availability of Participant Direction by Type of Living Arrangement.

SDAN believes that self-direction should be available to anyone as allowed under CMS guidelines. Individuals in residential programs that support fewer than four participants should have the ability to self-direct other services.

SDAN Recommendation: In addition to checking the first and third boxes of this section, check box 2 as well.

Page 5 & 6. E-1 g. Participant-Directed Services.

SDAN Recommendation: Check Employer Authority for the services: Employment Discovery and Customization and Supported Living. Add Shared Living as a service that can be participant-directed with Budget Authority.

Page 6. E-1 i. Provision of Financial Management Services. Check that this is a waiver service instead of an administrative activity and adjust the rest of this section as needed as a result of this change, such as creating a Service Definition in Appendix C.

Page 7. E-1 i. Section iii. Scope of FMS Item 6. In the event that our above recommendation is not accepted and the FMS remains an administrative entity, add “Support Broker, if applicable” as an entity who should receive budget status and expense reports.

Page 15. E-2. b.iv. Participant Exercise of Budget Flexibility. SDAN supports the participant’s ability to move funding from one approved service to another without prior approval by DDA as long as the team agrees that the move does not jeopardize the participant’s health and safety. This would include increasing the rate of pay for employees or vendors (including adjustments based on changes in the IRS mileage reimbursement rate). Only the addition of new services to the plan would need prior approval by DDA.

SDAN Recommendation: Check the box that indicates: **The participant has the authority to modify the services included in the participant-directed budget without prior approval.** Put the following specifications in the next box.

Participants may move funds among line items or increase the rate of services for line items so long as the changes do not pose a risk to health and safety, as verified by the signature on a budget modification document signed by the TCM. Participants wishing to add a new service to the PCP must submit plan and budget modifications to DDA for approval after signed by the participant (or their legal guardian), the support broker (if involved) and the TCM, whose signature assures that the change does not put the participant’s health and safety at risk.

Page 15. E-2.bv. Expenditure Safeguards: DO NOT DELETE the Support Broker from the list of individuals who will monitor funds and receive monthly supports. The third paragraph in this section discusses, “The use of a multi-layered review process ensures that potential budget problems are identified on a timely basis.” Yet the one person on the team who has traditionally

tracked the budget in a up-to-date way is being eliminated from the process. Helping with monitoring the budget is an optional service that participants can ask a support broker to assist with, per the definition in Appendix C. Therefore, the support broker needs to obtain these documents in order to provide that assistance if requested by the participant. The Support Broker is an invaluable member of the team in this regard.