

Self-Directed Advocacy Network of Maryland, Inc.

Participants, Families, Friends, Support Brokers & Other Professionals advocating for those receiving self-directed waiver services.
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August 2, 2019

via email

Governor Larry Hogan
100 State Circle
Annapolis, Maryland 21401-1925

Dear Governor Hogan,

I am following up on a series of calls and emails that began on June 24, 2019 with Carly Hviding who just left your staff to attend law school.

I want to thank you for your commitment to serving people with developmental disabilities. As a parent of an adult with DD and as a volunteer advocate for over 900 other adults who self-direct their DDA services, I can vouch for how life-changing those services can be. I am writing today on behalf of the SDAN board to urge you to postpone DDA's Request for Proposals for Fiscal Management Services for our state's self-direction program. SDAN believes that if this RFP is awarded as written, it will combine with both waiver and policy changes to result in the dismantling of our state's successful SD program.

Our SD program, was pioneered in 2005 by participants and family advocates, not bureaucrats. It saved money and anticipated CMS guidelines on participant choice and community integration by almost a decade. Self-Direction is based on two core principles. The first is participant choice and control of services. The second is keeping funding as close as possible to the intended recipient. This RFP violates both of those principles. It will harm, not help, the people who participate in Maryland's SD program. It is also likely to drive up the costs for the state.

After reviewing the letter of concern we sent to your office last summer regarding DDA's first attempt at this RFP, we were disheartened to see that all of the reservations we expressed then are the same. The scope of work sections are identical right down to the same grammatical errors and a troublesome colon that leads nowhere.

When we met with Ms. Robinson and Ms. Hviding last September to discuss the RFP and other concerns, Ms. Robinson noted that the RFP had been reviewed by experienced analysts who felt that it should be pulled. In fact, she concluded our meeting by stating that "this RFP is dead." Apparently, it is alive and well again. It appears that DDA is using this RFP to offload its own responsibilities towards SD participants onto a single contractor whose primary obligation is to DDA, not the participant. Here are our main concerns, once again:

1. The RFP radically expands the role of the FMS and significantly changes the nature of DDA's self-direction option. Although DDA had SDAN's input on this proposal a year ago, DDA administrators made no attempt to discuss this iteration of the RFP with us.

Some of the new FMS duties that were previously handled by a participant-led team, which include the participant, family advocate(s), the Coordinator of Community Services, and the Support Broker, include:

- a. The contractor will determine if the participant/representative is “competent” to self-direct. **Note: CMS guidelines actually state that participants should not be excluded from self-direction based on competency issues. In the past, when an individual needed extra support for self-direction, that extra help was provided by a support broker or Coordinator of Community Services as appropriate.**
 - b. The contractor is to utilize electronic data patterns to monitor the participant program for fraud and is responsible for reporting suspected fraud to the DDA within 24 hours. **Note: There is no requirement that the contractor contact team members for clarification prior to reporting.**
 - c. One flag meant to identify possible fraud is simply the fact that the individual has chosen self-direction. **Note: Wouldn't this mean that the contractor must report every SD participant?**
 - d. The contractor, not the team, is tasked with determining whether it is appropriate for family members to work as staff. The RFP contains a detailed and potentially prejudicial list of conflicts that can exclude family members from employment. In addition, the contractor is tasked with enforcing the current Waiver which itself contains a long list of conditions that must be present for family members to work as staff. **Note: All of these conditions indicate a bias against family as staff at a time when CMS acknowledges that, especially in a tight labor market, it is often the best solution. In addition, these exhaustive conditions appear to remove employer authority from the participant and place it on the FMS. This presents serious consequences for both parties.**
 - e. CMS Code 12020, Information & Assistance in Support of Self-Direction, is currently a direct waiver service in the form of support brokerage. With this RFP, it appears it will also be part of the administrative services provided by the FMS. How can it be both in the same waiver?
2. Awarding the contract to only one FMS allows no choice for participants. The quality of FMS services has a direct impact on the participant's ability to recruit, hire and retain staff. Slow turnaround times in hiring or in correcting payroll errors can be disastrous for participants. The quality assurance requirements in this RFP for participant service are lax. And choice is even more important since the FMS will be providing "counseling" services. Competition between providers is always a good thing. It leads to attempts to achieve customer satisfaction-- that is improvement. As you well know, competition leads to excellence and monopolies lead to complacency. (Note too that DDA now insists that participants have a choice among various resource coordination agencies-- which also complete administrative activities.)
 3. The RFP combines duties for administering the OHS Community First Choice program and DDA-waivers self-direction option and **still** does not properly distinguish

which duties and requirements apply to which program. This makes the entire RFP very difficult to understand both for bidders and for stakeholders.

4. Despite a small concession allowing participants to choose between a traditional support broker or the “counseling service” provided by the FMS, many problems remain with embedding counseling into this RFP.
 - a. Including counseling in FMS duties is unusual. Most FMSes, including the two agencies now serving SD participants, do not provide this service. This unusual condition has also discouraged other potential providers from bidding. We have a letter from one national provider who was initially interested in this project explaining that the counseling requirement is one reason they have chosen not to bid the project.
 - b. Although this new iteration of the RFP now allows the participant to choose between a traditional support broker and FMS counseling services, it is clearly designed to extinguish the role of the support broker. To new participants, Counseling Services appear to be “free” because the participant does not see that cost deducted from the budget. On other hand Support Broker services must be subtracted from the participant budget if the participant is to access them. So most participants will choose the “free” service over the paid one.
 - c. Although the RFP itself notes that “counseling services” are not interchangeable with support broker services, it treats those two roles as if they were interchangeable by requiring individuals to choose one or the other. **Note: there is a significant difference between a support broker, whose primary fealty is to the participant, and the counseling service provided by a contractor whose primary loyalty is to the State. Right now, independent support brokers are the only professional team members who are not agents of the state. If the individual chooses to save their waiver funds by accessing the counseling service, he or she will have no access to any independent advocate. However, the state will still be paying for an inferior service.**
 - d. The excel spreadsheet which bidders must use to complete their bid, assumes that **all participants will choose counseling services**, since the formula for the cost of counseling services cannot be adjusted to exclude participants who don’t want to access those services. **Note: this creates a serious problem for bidders and potential problems with CMS regarding duplication of services.**
5. This RFP continues to demonstrate a bias against the current Maryland FMS agencies, which are already successfully serving self-directing Marylanders, because it retains the condition that the bidder qualifications should include having provided services for at least two state agencies. Since it is unlikely that either of these Maryland companies will win the bid, the valuable infrastructure that has supported the program will quickly evaporate, possibly before the transition to the new bidder is even complete.

6. In a period full of difficult transitions that have included year-long service delays for 30% of people transitioning to adult services, significant delays for approvals of updated plans, and mass confusion over the new LTSS platform, this RFP for a single provider promises yet another difficult transition. Frankly we wonder how much more strain professionals, participants and the families who support them can take.
7. In a recent article in the *Daily Record* (Tim Curtis, July 12, 2019), DDA representatives implied that this RFP was the solution to their failure to get the complete federal match for FMS services. We believe that DDA's failure to get the match had little to do with who was providing FMS services, but was closely related with DDA's overall competence. We suggest that your office contact both the Arc Central Chesapeake Region and Medsource to get more information about questions raised in the recent audit about FMS services.
8. At the conclusion of the 2018 RFP conference, a state procurement officer explained to SDAN representatives that he thought this RFP would cost over \$8,000,000—twice the DDA estimate. Since this is virtually the same RFP, those figures are still relevant. We believe the state should consider how much it is paying today for both SD FMS services and support broker services and conduct a careful cost comparison. We understand that this comparison would also need to account for Community First Choice SD services as well, but that can easily be done.

SDAN believes that Maryland should welcome new providers into our marketplace. Consumer choice, not agency bureaucrats, should determine who wins and who loses. Encouraging highly qualified FMS agencies to offer their services as a provider under the Waiver, instead of as an administrative service mandated by a single bidder, is likely to save the state millions of dollars over this uncertain and unwieldy RFP. It is also far more likely to meet the needs of consumers.

This RFP closes on August 14, 2019, so this is a time-sensitive issue. We are requesting that the state either postpone this RFP altogether or remove DDA's self-direction program from the bid until these important issues have been resolved. We hope to begin a dialogue with your staff on this and many other concerns about the quality of services for Marylanders with DD.

Respectfully, Meg Schuster Carter

cc:

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Carol Custer
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