



COMMONWEALTH of VIRGINIA

JACK BARBER, M.D.
INTERIM COMMISSIONER

DEPARTMENT OF
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November 1, 2017

The Honorable Stephen D. Newman
Pocahontas Building, Room E604
900 East Main Street
Richmond, Virginia 23219

The Honorable Bill R. DeSteph, Jr.
Pocahontas Building, Room E614
900 East Main Street
Richmond, Virginia 23219

Dear Senator Newman and Senator DeSteph:

This letter is a response to the attached correspondence dated March 9, 2017 regarding Senate Bill 1404 which directs the Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Medical Assistance Services (DMAS) (collectively, the Departments) to report on the subject matter contained in the legislation. Senate Bill 1404 states:

“The Department shall not reduce, terminate, suspend, or deny services for an individual enrolled in a waiver who is otherwise eligible for such services on the basis of such individual's informed choice of place of residence in the Commonwealth.”

The U.S. Centers for Medicare and Medicaid Services (CMS) published in the Federal Register, on January 16, 2014, 42 CFR Part 430, 431 et al.: “Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; Final Rule.” This federal regulation sets forth new requirements for settings providing HCBS long-term services and supports operating under 1915(c) Medicaid waiver authority. The final rule reflects CMS’ intent to ensure that individuals receiving services and supports through Medicaid’s HCBS programs have full access to the benefits of community living and are able to receive services in the most integrated setting. The final rule requires that all home and community-based settings are integrated in and support full access to the greater community.

The CMS HCBS final rule requires states to ensure that *current settings* providing group based day services or residential services in a provider owned/operated residential setting fully comply with the settings provisions of the final rule by March 17, 2022. For *new settings*, CMS requires states to ensure that they fully comply with the final rule prior to providing HCBS waiver services and receiving federal matching funds.

Virginia must abide by these federal regulations in order for the Commonwealth to continue to receive federal matching funds for the HCBS waiver services delivered in affected settings. At this time, DBHDS is not aware of any individual enrolled in one of the Developmental Disabilities waivers who has currently experienced a reduction, termination, suspension or denial of waiver services due to his or her choice of place of residence. DMAS and DBHDS continue to work toward educating individuals and providers about the implications of the final rule. The Departments are confident that most, if not all, currently operating group home, sponsored residential, supported living, group day and group supported employment settings will be able to comply with the HCBS final rule by the mandated deadline, and the Departments are actively engaged in ensuring new settings have the information needed to assist them with demonstrating compliance with the regulations prior to providing services.

Sincerely,

A handwritten signature in blue ink that reads "Jack Barber". The signature is written in a cursive style with a large, prominent "J" and "B".

Jack Barber, M.D.

Enc.

Cc: William A. Hazel, Jr., M.D.
Joe Flores
Cynthia Jones, DMAS