COMMONWEALTH of VIRGINIA
DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES
Post Office Box 1797
Richmond, VA 23218-1797

S HUGHES MELTON, MD, MBA
FAAFP, FABAM
COMMISSIONER

Telephone (804) 786-3921
Fax (804) 371-6638
www dbhds virginia.gov

October 12, 2018

Senator Rosalyn Dance
Delegate Scott Garrett
Virginia Joint Commission on Health Care
600 E Main St.
Richmond, VA 23219

Dear Senator Dance, Delegate Garrett, and Members of the Joint Commission on Health Care,

Over the last several years, the Joint Commission on Health Care (JCHC) has expressed interest in addressing the quality of care for individuals with developmental disabilities that receive Medicaid disability waiver services. In 2017, the JCHC conducted a study titled "*The Creation of a Registry of Cases of Abuse and Neglect of Individuals enrolled in the Building Independence, Family, and Individual Supports and Community Living Medicaid Home and Community Based Services Waivers.*"

The 2018 General Assembly passed HB 813 which directed the Department of Behavioral Health and Developmental Services (DBHDS) to convene a group of stakeholders to determine steps that may be taken to improve the overall quality of the Commonwealth's direct support professional workforce, for the developmental disability population, and subsequently, if indicated, to make recommendations for public policy changes that increases transparency of the quality of the workforce, to help support individual health and safety. The legislative language states as follows:

> **Be it enacted by the General Assembly of Virginia:**
> **1.** *§ 1. That the Department of Behavioral Health and Developmental Services shall, in conjunction with the Department for Aging and Rehabilitative Services, the Department of Medical Assistance Services, the Department of Social Services, the Virginia Association of Community Services Boards, the Virginia Network of Private Providers, and other relevant provider organizations and stakeholders, convene a work group in support of the Joint Commission on Health Care's efforts to improve the quality of the*

Commonwealth's direct support professional workforce and, if necessary, develop recommendations for policy changes to increase the transparency of the employment history of direct support professional job candidates. The Department of Behavioral Health and Developmental Services shall report its recommendations to the Joint Commission on Health Care by October 1, 2018.

Stakeholder Engagement

Pursuant to HB 813, DBHDS convened a stakeholder group including:

Department of Aging and Rehabilitative Services
Department of Medical Assistance Services
Department of Social Services
Virginia Association of Community Services Boards
Virginia Network of Private Providers
Staff of the Joint Commission on Health Care
The ARC of Virginia
The ARC of Southside
Didlake
Mount Rogers Community Services Board
The Choice Group
Virginia Association of Applied Behavior Analysts
Positive Behavior Consulting
Virginia Access
The Hartwood Foundation
Planning District 1 Behavioral Health Services
Lutheran Family Services of Virginia

Meetings

DBHDS held three meetings of the Stakeholder Group. Meetings occurred on the dates below.

- **May 22, 2018:** DBHDS held an organizational phone call to identify participants, and provide information about the work group process, including meetings, and an options grid to guide the group work.
- **June 6, 2018:** The stakeholder group met from 1:00-3:30PM at the Henrico Public Library, Libbie Mill Branch. Topics included review of the group charge, and potential options to address quality in the direct support professional workforce and factors for consideration of each option.
- **July 11, 2018:** The stakeholder group met from 1:00-3:30PM at the ARC of Virginia in Richmond, VA. Topics included further evaluation of potential options and identification of three recommended options.

Process

The workgroups were led by Connie Cochran, Deputy Commissioner for Developmental Services and Dr. Dev Nair, Assistant Commissioner for Quality Management and Development of the Department of Behavioral Health and Developmental Services. An options grid format was utilized to guide the group discussion and to maximize the input and expertise of each stakeholder participant, so that the input of each organization was considered equally. The options grid demands that together the group

identify the charge or problem statement, the top three options to address the problem/charge, and factors to consider for each option. The goal is to identify and refine options that are agreed upon for the purposes of the report.

To start, the group agreed on the following problem statement: "The Work Group is charged to determine steps that may be taken to improve the oyerall quality of the Commonwealth's direct support professional workforce (for the developmental disabilities population), and subsequently, if indicative, to make recommendations for public policy changes that increases transparency of the quality of the workforce, to help support individual health and safety."

The following factors were deliberated by the group:

1- **Current Policy environment:** Is the option possible under current rules, laws, regulations, and if not, what would be required to change?
2- **Transparency of Work Experience and risk to provider**: Would the option encourage reporting of all incidents and support providers in sharing staff performance information without undo fear of increase risk of litigation, etc.?
3- **Impact on End Users (individuals supported):** Will this make a discernable impact potential on improving the lives of individuals receiving services or supports?"
4- **Labor Force Portability:** Does the option provide a means of defining the role of the direct support professional so that qualifications are incremental and transferrable across employers thus increasing the quality of care and desirability of the position while reducing risks of abuse or neglect? Could this option be implemented in other fields?
5- **Cost and/or Other Risks to Provider**: Does the option potentially increase or decrease cost to the provider for hiring, implementing, and/ or maintaining trained workforce? Indicate if the option is expected to have a long term or short term impact.

The three options that were evaluated were:

Option 1: Direct DBHDS to facilitate development of a centralized tracking system of qualified direct support professionals, to track information such as core competencies.

Option 2: Direct DBHDS to develop and/or amend regulations to require providers to certify trainings and to issue training certificates, so that they become portable to the employee.

Option 3: Develop a third party training/certification/tracking entity that includes a data base for employers to check.

<u>Policy Options Summary and Discussion</u>

Option 1: Direct DBHDS to facilitate development of a centralized tracking system of qualified direct support professionals, to track information such as core competencies.

The 2017 JCHC Abuse and Neglect Study contemplated the possibility of establishing a registry of abuse and neglect cases, by direct support professional, in an effort to improve the quality of the work force. It was presented as a policy option to the Commission, but was not approved by JCHC members. Stakeholders have cited concerns about considerable cost, time and effort involved in creation and maintenance without clarity about the effectiveness and impact on negative outcomes. They noted that currently all events are not reported, even with existing mandatory reporting laws. Additionally, there is no state entity that makes formal determinations that abuse or neglect has occurred, in the adult population, as determinations are made by the employer and may or may not be included in the employee's personnel record. An outside organization would have to be identified, given the authority and funded in order to take on the creation and maintenance of a registry. Group members also voiced concerns that a registry could reduce the size of the workforce, in an already challenged workforce environment, notably with the impact of barrier crimes, prohibiting qualified individuals from working for a DBHDS licensed provider.

As an alternative, the group members shifted focus to consideration of a positive tracking mechanism. This was determined due to the limitations and punitive nature of an abuse/neglect registry and the goal of the group to make recommendations to improve quality and transparency of the direct support professional workforce. The group generally agreed that a 'step at a time' process of laying the groundwork for a tracking system, would be a more feasible first step.

The proposal would direct DBHDS to facilitate establishment of a centralized tracking system of qualified direct support professionals, to track information such as the Medicaid Waiver core competencies checklist. Providers could on a voluntary basis enter the training and competencies information, and the database would be searchable by providers looking to check credentials of potential employees. This would provide some record of credentials and a visible pattern of trainings. It could signal the breadth of training, and indicate special competencies, Basic and Advanced. This would be the least costly of the three options.

The limitations of this option is that as drafted, it is voluntary, and there was no recommended enforcement, so participation may be low, especially at first. It would require staff time and some cost to the state and to the provider.

Option 2: Direct DBHDS develop and/or amend regulations to require providers to certify trainings and to issue training certificates, so that they become portable to the employee.

Direct Support Professionals (DSPs) may come to employment with DBHDS licensed providers with no previous training, some previous training, or may have received training through a comprehensive training program from a provider employer. A key challenge with the workforce is that there is no standardization of the training, and individuals may move from one employer to another, repeat training already received, which is a cost to the provider, and takes time for the employee to complete.

This option is to develop a system allowing employers to certify that direct support professionals had completed required training and/or achieved standard core competencies. This would allow employers to have confidence in the competence of new employees and minimize duplicative training, and potentially reduce costs to providers. Providers could be required through regulations to provide employees with any certificates that are issued (i.e. CPR card, first aid training, medication management, basic competencies).

Considerations

The work group examined this option and was generally supportive of efforts to require employers to certify or attest to competencies. However, there was concern among some providers that different employers may have differing standards for training and certifying competency. Thus, they may still choose to re-train new employees, even though a prior employer has certified competency in a given area. Additional regulatory action would be necessary to allow competency certification to transfer to another employer.

Option 3: Develop a third party certification/tracking entity that includes a data base for employers to check.

Given concerns about establishing a punitive tracking system or registry and the ability to provide additional immunity for providers to share potentially disqualifying information, the work group contemplated a type of positive tracking system to incentivize higher quality by creating a third party certification or credential tracking program that would store information about employee certifications and credentials and allow them to become portable.

Third party certification could allow for the development of a Three Tier System of direct support professionals (I, II, III) and provide portability around basic trainings and basic competencies and or advanced competencies that provides the ability to hire experienced staff and save costs on duplicating or repeating unnecessary trainings. One model that was reviewed was Career Gear Up, implemented in New York State, as a means of improving the quality of the direct support professional workforce.

The group generally supported the proposal because it would provide standardized certification programs to address the current fragmented, and varying training in the current field. This would have the impact of professionalizing the direct support professional workforce, include a database that would track standardized employee training and certifications, and provide functionality for prospective employers to check job applicant training and certifications as they make hiring decisions. Additional training and certifications could be a clearer indicator of quality, incentivize quality improvement, and potentially increase the qualified pool of applicants.

There was general consensus that a third party system that allows direct support professionals, to be able to have their trainings recorded to create a direct support professional level system that would benefit the entire workforce, including providers and employees. Such a system for the developmental disabilities services waivers could provide a method for providers to be paid a higher rate by

maintaining a high ratio of direct support professionals II and IIIs. This could also extend to the required competencies and advanced competencies.

Considerations

One consideration would be the cost of implementing a certification or credentialing program. The costs of paying for credentialing and ongoing maintenance would either be borne by the employee, the provider, or the Commonwealth. Given the relatively low wages earned by direct support professionals, it is unlikely that they would be able to alone, afford the costs of credentialing or certification. Such costs may need to be assumed by the Commonwealth, either through direct support, or through the provision of higher rates to providers, which would allow them to offset the cost of credentialing their workforce. Benefits of certification or credentialing include an improved quality workforce, reduced training costs for providers, potential reduced turnover costs (if employees are coming with requisite skills and experience), elevation of the status of direct support professionals which may attract more qualified staff and lead to an increase in competitive pay.

Overall Considerations

One issue that was raised in the workgroup and during the 2018 General Assembly session was that individuals in direct support professional roles work in both behavioral health and developmental disabilities services environment. Changing the code or making policy interventions in only one of those areas, would present challenges for providers who are hiring direct support professional staff and for the prospective employees as different requirements for the populations are implemented. This is an important consideration, and addressing the quality of a workforce serving vulnerable Virginians can be a significant undertaking. One option would be to pilot a new program in the Medicaid Waiver services for one to two years, and to and plan a full-scale statewide implementation, as Virginia learns and adapts the program to best meet the needs of the behavioral health and developmental disabilities services workforce.

Second, there was some, however limited support in the group for revisiting 2018 legislation to increase liability protection on employer references above basic 'rehire or not' type responses. There is some existing protection in the Code of Virginia, however anecdotal data suggests that this option is often not utilized, for fear of accusations of libel and legal action by current or former employees.

The group concluded this option would not necessarily increase quality nor increase the pool of workers as the provision of a reference would remain voluntary for employers, even with the release of the former employee, due to agency protocols. Members expressed concern that direct support professionals could also be negatively impacted on their ability to change positions, if they were still employed, and that such a change might shift too much power to employers.

Conclusion

DBHDS and the members of the House Bill 813 Work Group would like to thank the Joint Commission on Health Care for their interest and engagement on this critical issue of improving the quality of care for Virginia's most vulnerable population. We hope that the options detailed above provide some useful information about how to further address this issue of quality and transparency in the direct support professional workforce. We would be happy to meet with any General Assembly member individually to discuss these options further.

Sincerely,

S. Hughes Melton, MD, MBA
Commissioner