

Report on the Interim Activity of the Virginia Disability Commission 2022

Members

Legislative Members:

Senator Barbara A. Favola, Chair
Delegate Robert D. Orrock, Sr., Vice Chair
Senator Ghazala F. Hashmi
Delegate Patrick A. Hope
Delegate Phillip A. Scott
Delegate H. Otto Wachsmann, Jr.

Citizen Members:

Gayl Brunk
Conner Cummings
Amy Laufer
John Tolleris

Staff:

Ryan Brimmer, Senior Attorney, Division of Legislative Services
Trevor Merrion, Staff Associate, Division of Legislative Services

Website:

<http://dls.virginia.gov/commissions/vdc.htm>

BACKGROUND

The Virginia Disability Commission is the legislative body charged with identifying and recommending legislative priorities and policies for adoption or examination by the General Assembly in order to provide ongoing support in developing and reviewing services and funding related to Virginians with disabilities.

OVERVIEW

The Virginia Disability Commission (the Commission) met three times during the 2022 Interim.

The first meeting was held on September 8, 2022, and included presentations on (i) [*HJ 85 \(Shin, 2022\)*](#), which requested the Department of Medical Assistance Services (DMAS) to study the feasibility of implementing a medically needy spend-down provision for individuals receiving developmental disability waivers, and (ii) the 2021 DMAS study directed by [*SB 213 \(Favola, 2020\)*](#), which established a work group to evaluate the current Personal Maintenance Allowance (PMA) amount for individuals receiving Medicaid-funded waiver services and the impact of the current PMA amount and other income limits on the ability of Medicaid waiver service recipients to engage in meaningful work and establish and maintain independence.

The second meeting was held on October 20, 2022, and included presentations on (a) the Department of Rail and Public Transportation study of transit equity and modernization requested by [*HJ 542 \(McQuinn, 2021\)*](#), (b) DMAS responses to member inquiries relating to the SB 213 study and the implementation of a medically needy spend-down provision for individuals receiving developmental disability waivers, and (c) proposed legislation to remove "handicap" and "handicapped" from the Code of Virginia.

At the October 20, 2022, meeting, a motion was put forth that the Commission recommend the establishment of a medically needy spend-down provision for individuals receiving developmental disability waivers. The motion passed unanimously.

The third meeting was held on November 21, 2022, and included presentations on (1) updates to proposed legislation to remove "handicap" and "handicapped" from the Code of Virginia, (2) accommodations for individuals with disabilities in state parks and recommendations for improving access, and (3) the history of 14(c) certificates and subminimum wage employment in the Commonwealth and an overview of services to help employed individuals maintain benefits.

At the November 21, 2022, meeting, a motion was put forth that the Commission recommend the proposed legislation removing "handicap" and "handicapped" from the Code of Virginia and a second motion was put forth both to adopt the items included in "[*Suggestions for 2023 Interim*](#)" as the Commission's 2023 work plan and to forward a [*letter dated November 21, 2022*](#), from Mr. Dennis M. Findley to Senator Barbara A. Favola to the Department of Medical Assistance Services for their review. Both motions passed unanimously.

Full summaries of the meetings, including public comment and member discussion, may be found below.

COMMISSION RECOMMENDATIONS

1. Establish a medically needy spend-down provision for individuals receiving the Community Living, Family and Individual Support, and Building Independence waivers, collectively known as the developmental disability waivers.

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2. Replace various instances of the terms "handicap," "handicapped," and similar variations throughout the Code of Virginia with alternative terms, as appropriate in the statutory context, such as "disability" and "impairment."
3. Adopt items included in "*Suggestions for 2023 Interim*" for the Commission's 2023 work plan.
4. Forward *letter dated November 21, 2022*, from Mr. Dennis M. Findley to Senator Barbara A. Favola to the Department of Medical Assistance Services for their review.

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MEETING SUMMARIES

Report on the Interim Activity of the Virginia Disability Commission – 2022

September 8, 2022, at 1:00 p.m.

Pocahontas Building, Senate Committee Room A

<http://dls.virginia.gov/commissions/vdc.htm>

The Report on the Interim Activity of the Virginia Disability Commission – 2022 (the Commission) met in Richmond with Senator Barbara A. Favola, chair, presiding.¹ The meeting began with the unanimous election of Senator Favola as chair and Delegate Robert D. Orrock, Sr., as vice-chair, followed by presentations, public comment, and member discussion. Materials presented at the meeting are accessible through the [Commission's meetings webpage](#). Video of the meeting is available [online](#).

Presentation of HJ 85 (Shin, 2022)

Delegate Irene Shin

Delegate Shin provided a summary of [HJ 85](#), a study resolution that the Studies Subcommittee of the House Committee on Rules referred to the Commission during the 2022 Regular Session of the General Assembly. HJ 85 requested the Department of Medical Assistance Services (DMAS) to study the feasibility of implementing a spend-down provision for the Community Living, Family and Individual Support, and Building Independence waivers (developmental disability waivers). Delegate Shin noted that when individuals with developmental disability waivers who receive Supplemental Security Income begin receiving Social Security Disability Insurance upon the death or retirement of a parent, their income typically increases to just below the income threshold for receiving waiver benefits. Therefore, if they maintain or acquire employment, they risk exceeding the income threshold and losing their benefits. As a result, many individuals with developmental disabilities who would benefit from working are disincentivized from seeking or maintaining employment. By establishing a spend-down provision like the one already in place for the Commonwealth Coordinated Care Plus waiver, individuals could deduct disability-related expenses from their income when determining their waiver eligibility, allowing a greater number of individuals with developmental disabilities to seek or maintain gainful employment without jeopardizing their waiver eligibility.

Presentation of DMAS Study Directed by SB 213 (Favola, 2020)

Kelly Pauley, Eligibility and Enrollment Manager, DMAS

Ms. Pauley reviewed the findings from the 2021 DMAS study initiated by [SB 213](#), in which DMAS established a work group to evaluate the current Personal Maintenance Allowance amount for individuals receiving Medicaid-funded waiver services and the impact of the current

¹ **Members Present:** Senator Barbara A. Favola (chair), Delegate Robert D. Orrock, Sr. (vice-chair), Senator Ghazala F. Hashmi, Delegate Patrick A. Hope, Delegate Phillip A. Scott, Delegate H. Otto Wachsmann, Jr., Conner Cummings (term expired June 30, 2022), Amy Laufer, John Tolleris.

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Personal Maintenance Allowance amount and other income limits on the ability of Medicaid waiver service recipients to engage in meaningful work and establish and maintain independence. She noted that since enrollment in the developmental disability waiver program is currently capped in accordance with the General Assembly's budget, expanding waiver eligibility by instituting a spend-down provision would not increase enrollment and would, therefore, have no fiscal impact on the Commonwealth. Ms. Pauley also summarized the work group's recommendations for increasing the Personal Maintenance Allowance and the projected costs of each recommendation. DMAS's complete report to the General Assembly on the findings and conclusions of the work group may be found [here](#).

Public Comment

Several members of the public, including representatives from entities providing employment or other services to individuals with developmental disabilities and parents of individuals with developmental disabilities, spoke in favor of establishing a spend-down provision for the developmental disability waivers. Many described personal circumstances in which an individual with a developmental disability was required to stop or limit the time spent working as a result of the current regulations. One employer of individuals with developmental disabilities described how recent increases to the minimum wage have required her to curtail staff to ensure that her employees do not lose their benefits.

Members of the public also testified in favor of removing the terms "handicap" and "handicapped" from the Code of Virginia, citing their antiquated and negative connotations.

Member Discussion

During the presentations, Commission members inquired about (i) the cost of adding enough spots to the developmental disability waiver program to clear the current waitlist, (ii) the possibility of increasing the Personal Maintenance Allowance on a regional basis, and (iii) how other states are handling the spend-down provision for the developmental disability waivers. Ms. Pauley offered that DMAS would be able to present information in response to these inquiries at a future meeting of the Commission. Following public comment, Commission members expressed support for further exploring both the establishment of a spend-down provision for the developmental disability waivers and the removal of the terms "handicap" and "handicapped" from the Code of Virginia.

The Commission made tentative plans to select a date in the middle of October for its next meeting.

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Report on the Interim Activity of the Virginia Disability Commission – 2022

October 20, 2022, at 10:00 a.m.

Pocahontas Building, Senate Committee Room A

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The Report on the Interim Activity of the Virginia Disability Commission – 2022 (the Commission) met in Richmond with Senator Barbara A. Favola, chair, presiding.² The meeting began with introductions and opening remarks, followed by presentations, public comment, and member discussion. Materials presented at the meeting are accessible through the [Commission's meetings webpage](#). Video of the meeting is available [online](#).

Presentation of the Department of Rail and Public Transportation's Virginia Transit Equity and Modernization Study

Jennifer DeBruhl, Director, Department of Rail and Public Transportation (DRPT)

Ms. DeBruhl summarized the methods and findings of a needs assessment that was directed by [HJ 542 \(McQuinn, 2021\)](#) and completed in August 2022. She noted that, despite challenges posed by the COVID-19 pandemic, DRPT was able to gather data from more than 3,500 interactions, including public forums and virtual rider focus groups. The two-year study found that certain localities throughout the Commonwealth lacked i) well-placed, ADA-accessible bus stops, ii) consistent transit infrastructure, and iii) rider advisory councils, among other findings, and established an action plan to address these needs. Members inquired into the possibility of utilizing school buses outside of school hours to support other transit needs; emphasized the need to implement the recommendations in the action plan, which are organized for near-term, mid-term, or long-term implementation; and offered to address regulatory issues as necessary to facilitate DRPT's efforts. The study's executive summary and final report are available at [DRPT's website](#).

Presentation of Responses to Commission Member Inquiries Relating to Recommendations for Changing Medicaid Programs to Remove Barriers to Independence

Kelly Pauley, Eligibility and Enrollment Manager, Department of Medical Assistance Services

Ms. Pauley provided a brief overview of the [2021 DMAS study](#) initiated by [SB 213 \(Favola, 2021\)](#), which offered recommendations for changing the Personal Maintenance Allowance (PMA) and establishing a medically needy spend-down provision for recipients of developmental disability waivers, and shared DMAS's responses to member inquiries from her presentation at the previous meeting of the Commission. She informed the members that DMAS contacted the Centers for Medicare & Medicaid Services with regard to expanding the definition

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Members Absent: Gayl Brunk, John Tolleris.

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of medical and remedial expenses and that the agency was still awaiting a reply. She described the challenges of estimating the total cost of eliminating the waiver waitlist due to recipients' fluctuating needs, while noting estimated costs per recipient, how these costs varied by waiver, and how these costs would increase in 2023 due to the rebasing of service rates (for more information, see page 8 of Ms. Pauley's *presentation materials*). In response, it was requested that DMAS prepare an estimate of the fiscal impact of increasing the number of waiver slots by 2,000 recipients. Ms. Pauley reviewed the three locality groupings used to determine PMA rates in the Commonwealth and noted that the General Assembly could enact legislation to change the groupings or increase their limits. She compared PMA rates in other states with those in Virginia, noting that Virginia had the fourth lowest rate for recipients residing in institutions and the 13th lowest rate for recipients receiving home and community-based waiver services (\$1,388 per month). She concluded by noting that many states have medically needy spend-down provisions for developmental disability recipients and reviewed how such provisions had been implemented in the District of Columbia and Minnesota.

Following the presentation, a motion was put forth for the Commission to recommend the establishment of a medically needy spend-down provision for the recipients of developmental disability waivers. The motion passed unanimously.

Presentation of Proposed Legislation to Remove "Handicap" and "Handicapped" from the Code of Virginia

Ryan Brimmer, Senior Attorney, Division of Legislative Services

Mr. Brimmer summarized a bill draft that would remove "handicap" and "handicapped" from the Code of Virginia, substituting "disability" and "disabled," respectively, in most instances and "visual impairment" and "visually impaired," respectively, as appropriate in other instances. He explained that "disability" has been the preferred term for several decades, citing the Virginians with Disabilities Act of 1985, and that it is the term most commonly used by public and private advocacy organizations today. Members emphasized the importance of sharing the proposal with stakeholders and receiving feedback from the community, while noting that a vote on a recommendation could be held at the next meeting of the Commission. The latest draft of the proposed legislation as of October 28, 2022, is available [here](#).

Public Comment

Several members of the public expressed opposition to any future legislation that would enable physician-assisted suicide, citing concerns that it would create opportunities for fraud and jeopardize the lives of individuals with disabilities. Several individuals applauded the Commission's recommendation to establish a medically needy spend-down provision for recipients of developmental disability waivers and spoke to the need to identify other barriers preventing individuals with disabilities from seeking or maintaining employment. Several individuals testified in support of the removal of "handicap" and "handicapped" from the Code of Virginia and suggested the use of person-first or person-centric language (e.g., "individuals with disabilities" instead of "disabled individuals") wherever possible. One member cited a recent article³ discussing a study in which members of the medical community expressed reticence to

³ Kolata, Gina. "These Doctors Admit They Don't Want Patients with Disabilities." *New York Times*, 19 Oct. 2022, <https://www.nytimes.com/2022/10/19/health/doctors-patients-disabilities.html>.

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care for individuals with disabilities. Another member identified the current lack of availability of long-term care support and fully accessible housing as two barriers to independent living.

Member Discussion

Members expressed a desire to bring the motion to remove "handicap" and "handicapped" from the Code of Virginia to a vote at the Commission's next meeting. They also encouraged members of the Commission and the public to put forth ideas for the Commission's 2023 work plan, while noting that the number of items should be limited to accommodate requests that may arise during the 2023 Session of the General Assembly.

The Commission made tentative plans to select a date in November for its next meeting.

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Report on the Interim Activity of the Virginia Disability Commission – 2022

November 21, 2022, at 1:00 p.m.

Pocahontas Building, Senate Committee Room A

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The Report on the Interim Activity of the Virginia Disability Commission – 2022 (the Commission) met in Richmond with Senator Barbara A. Favola, chair, presiding.⁴ The meeting began with introductions and opening remarks, followed by presentations and member discussion. Materials presented at the meeting are accessible through the [Commission's meetings webpage](#). Video recording of the meeting is available [here](#).

Presentation: Update on Proposed Legislation to Remove "Handicap" and "Handicapped" from the Code of Virginia

Ryan Brimmer, Senior Attorney, Division of Legislative Services

Mr. Brimmer summarized updates to a bill draft that would remove "handicap" and "handicapped" from the Code of Virginia, noting that the draft emphasized individual-first constructions (e.g. "individual with a disability") in accordance with suggestions from the public received at the Commission's previous meeting as well as from organizations such as the Arc of Virginia. During the period of public comment and member discussion, a preference for "disabled individual" was voiced, and Mr. Brimmer explained that a balance between "individual with a disability" and "disabled individual" occurred organically in the Code and that this bill would not disrupt that balance.

A motion was put forth for the Commission to recommend to the General Assembly the proposed legislation removing "handicap" and "handicapped" from the Code. The motion passed unanimously. The latest draft of the proposed legislation as recommended by the Commission is available [here](#).

Presentation: Accommodations for Individuals with Disabilities in State Parks and Recommendations for Improving Access

Frank Stovall, Deputy Director of Operations, Department of Conservation and Recreation (DCR)

Mr. Stovall provided a brief overview of Virginia State Parks (VSP), including challenges to accessibility, currently existing accessible facilities, recent ADA-compliant additions and current projects, and next steps. He highlighted initiatives such as Trail Access Grants and the Virginia Outdoors Plan, the Commonwealth's federally required Statewide Comprehensive Outdoor Recreation Plan, which is to be completed by December 23, 2023, and which guides all outdoor recreation development at the state and local levels. He underscored the agency's commitment to making parks as barrier-free as possible and noted that individuals may find more information

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about accessible facilities on the VSP website, on individual park websites, or by contacting a park directly.

Mr. Stovall explained that VSP has more than \$250 million in unfinanced maintenance needs, including approximately \$150 million in priority projects, which include accessibility projects identified through observations in the field. He elaborated that this list would likely grow following a more complete audit of park facilities, which had been delayed because increased visitorship to state parks during the COVID-19 pandemic had strained the agency's capacity for long-term planning. He explained that all of VSP's new buildings and parks are both ADA-compliant and code-compliant, but that facilities renovated in the past would generally only be compliant with the requirements that were in place at the time they were completed. He noted that the current availability of accessible park lodging is limited both due to the high degree of public interest and by reduced inventory resulting from ongoing renovation projects.

There was discussion about the involvement of disability advocacy groups in the planning process at the park level, and it was explained that DCR primarily focuses on master planning and executive functions, including providing guidance to parks on improving access, while the volunteer-run friends groups at the various state parks oversee local planning, offering a means by which the community can get involved in the process.⁵ Members drew attention to the agency's 2023 Virginia Outdoors Plan as source for future recommendations for the Commission to consider and as an opportunity for the community to offer input.

Presentation: History of 14(c) Certificates and Subminimum Wage Employment in Virginia and Overview of Services to Help Employed Individuals Maintain Benefits

Donna Bonessi. Director for Employment Services and Special Programs. Department for Aging and Rehabilitative Services (DARS); David Leon. Director of Workforce Programs. DARS; Heather Norton. Assistant Commissioner for Developmental Services, Department of Behavioral Health and Developmental Services (DBHDS)

Ms. Bonessi provided a history and overview of 14(c) certificates in the Commonwealth, which enable certain employers to pay a subminimum wage to individuals with disabilities. She noted that the number of employers in the Commonwealth with 14(c) certificates has been decreasing for several years and that as of 2022 there remain 13 employers holding 14(c) certificates, employing approximately 385 individuals. She also informed the Commission of a \$13.8 million federal grant received by DARS in October 2022 to help transition individuals in subminimum wage employment to competitive integrated employment.

Ms. Norton highlighted that the 2012 settlement agreement between Virginia and the U.S. Department of Justice established an "Employment First" policy that is based on the principles that (i) individual supported employment in integrated work settings is the first and priority service option and (ii) the goal of employment services is to support individuals in integrated work settings where they are paid minimum or competitive wages.

Mr. Leon provided an overview of work incentives currently in place for individuals receiving Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) benefits and noted that the Commonwealth is regarded as a leader in the area of work incentives and benefits planning, pointing to the more than 115 work incentives specialist advocates credentialed by DARS in the state, who provide beneficiaries with free one-on-one assistance as

⁵ Individuals may learn more about how to get involved with their local state park's friends group by contacting their local state park. A list of friends groups at Virginia State Parks is also available [here](#).

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they navigate their program options. He also highlighted initiatives such as the Ticket to Work program and the Work Incentives Planning and Assistance program.

Members emphasized the value of promoting information about work incentives programs in schools to familiarize students with work options at an earlier stage, and presenters noted that DARS and DBHDS are currently coordinating with both the Department of Education and the Department of Medical Assistance Services (DMAS) to improve the transmission of this information so that individuals who would like to work but who have concerns about losing their benefits are better informed of their options. Members discussed the suitability of abolishing 14(c) certificates in the Commonwealth given the recent federal grant described above and it was agreed that the Commission would send a letter to the appropriate agency to learn more about the implications of abolishing 14(c) certificates.

Member Discussion and Adoption of the 2023 Work Plan

Prior to the meeting, the Commission reviewed a list of suggested activities for the 2023 interim, which was compiled largely from suggestions that had been made over the course of meetings in the 2022 interim and that were received from members of the public. The list was organized into three categories: (i) Housing and Transportation, (ii) Education and Employment, and (iii) Publicly Funded Services. Members discussed the suitability of utilizing work groups to address the various recommendations before the Commission and reviewed a letter submitted by a member of the public that recommended the exclusion of SSDI income from assessments of Medicaid waiver eligibility. A member also proposed that the Commission publish a compilation of statutes in the Code of Virginia that specifically impact individuals with disabilities.

A motion was put forth to adopt the suggested activities as the Commission's work plan for the 2023 interim and to forward the letter described above to DMAS. The motion passed unanimously. The list of suggested activities for the 2023 interim adopted by the Commission is available [here](#).

In passing the motion, members emphasized the importance of making any recommendations with budgetary implications by September to allow adequate time for those measures to be communicated to the Governor prior to the completion of the Governor's budget.

Members discussed the possibility of establishing a schedule of meetings for the Commission at the outset of the 2023 interim and of conducting meetings virtually whenever possible, designating the first meeting of next interim as the opportunity to address these matters.

The meeting concluded with a request that staff include correspondence from Commission member Conner Cummings regarding the letter described above when forwarding such letter to DMAS, which was granted by the chair.

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For more information, see the [*Commission's website*](#) or contact the Division of Legislative Services staff:

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