Summary of Public Comment

Intellectual Disabilities Waiver

The Public Comment period for the second posting of the Division of Developmental Disabilities' Alabama Home and Community-Based Waiver for Persons with Intellectual Disabilities (ID Waiver) Waiver Renewal opened on May 23 and closed on June 24, 2019. The Division received public comments forwarded from the Alabama Medicaid Agency. The public comment period was announced on both the Department of Mental Health and the Alabama Medicaid Agency websites along with a notice in the Birmingham News newspaper (the largest circulated newspaper in Alabama) and its affiliate, AL.com that includes other newspaper sponsors such as the Huntsville Times, Mobile Press-Register, and Montgomery Independent. Also, ADMH/DD Division established a workgroup whose members included providers of services, support coordination, consumer advocacy and a departmental Regional Community Services Director. ADMH/DD Division also held six (6) stakeholder meetings regarding waiver services to glean information regarding the types of services persons with Intellectual Disabilities and families need. Based on a review of all the comments the following categories will be summarized and addressed for CMS (the division intends to respond to comment not addressed in this summary as time permits and make these responses public to stakeholders): 1) Service Rates; 2) Developmental Disabilities Eligibility; 3) Person-Centered Planning 4) Choice; 5) Service Definitions; and Provider Qualifications and 6) Other comments. ADMH/DD Division will respond to all other comments and questions not pertaining to the waiver renewal individually.

Waiver Service Rates:

Comments submitted and questions posed relate to the following:

1) the average costs in Appendix J of the waiver the rates for new services,

2) If the rates in Appendix J and the new ratios for the new services to increase individual community experiences, was reflected in this budget requests,

3) Clarity on Community Prevocational Service as a new service and the rate,

4) why is there is no reimbursement for administrative expenses for personal care, companion services and day habilitation services,

5) several questions regarding the Individual Residential Budgeting Instrument (IRBI), the instrument used to determine the daily rate for individual costs for residential services,

6) The requirement for Residential Habilitation providers to have emergency staff available is not covered in the IRBI Rate,

7) Why the unit for nursing cannot be 15 minutes instead of hourly

8) needed increase in the allowable amount available for Specialized Medical Supplies from $1800.00 per participant per year to $2400.00.

ADMH Response:

1) The new community-based services included in the waiver renewal, i.e. Community Day Habilitation, Community Prevocational, have different rates that reflect the staff to participant ratios established in the service. Community Day Habilitation service does require different staffing ratios based on acuity levels as indicated by individual ICAP scores. The use of the ICAP score to establish individual acuity for facility-based day habilitation services did not change and levels one through four (1-4) for both services remain consistent. Four levels of Community Habilitation rates reflect the new ratios. Transportation costs for each level has been included, like the rates existing for Day Habilitation. With the addition of Community Prevocational service, there are now two rates established. One for facility based and the other for services delivered in the community where the ratio of provider staff to individuals is lower. Prevocational services are not based on acuity scores established by the ICAP.
2) The costs to include the eight levels of Community Day Habilitation and Community Prevocational services were included in the division's request to the Alabama legislature. The additional funds were approved by the legislature.
3) Supporting data from providers of facility day habilitation, personal care and companion services will be required to justify any rate increases. Any new rate increases can be added to the division's budget request submitted to the legislature.
4) The budget appropriations include an increase for Residential providers. That appropriation has been added into Appendix J Residential cost projections. IRBI rates are individualized and based on the needs of the participant and can be adjusted as the needs of the individual changes.
5) The Division hired a consultant to review, and have input into, waiver services and rates within the waiver renewal.
6) It has always been ADMH/DD Division's expectation that providers have emergency on-call staff available to provide services to individuals at the same level as indicated on the participant's IRBI. The emergency on-call staff is expected to be available to provide the level of staffing in the event of absence. The costs associated with this requirement is covered in the IRBI rate.
7) Nursing services as an hourly service instead of 15-minute unit is the billing unit established by the Alabama Medicaid Agency and used consistently by all service

providers as it requires. With implementation of the electronic visit verification monitoring service, some nursing service, such as finger sticks, wound changes, and injections, do not warrant a full hour of service. The division worked with AMA for the addition of a new billing code that providers can use to bill for injections where time spent by the nurse is less than one hour. The DD Division will continue to work with AMA to identify additional code(s) needed for any other activity taking less time than an hour.

8) Each participant whose assessed need identifies Specialized Medical Supplies has $1800.00 per year to purchase them. There has been no data provided supporting the need for an increase in this amount by $600.00 per participant per year. ADMH/DD Division will address the issue and act to include the increase in the budget request to the legislature, if the need for the increase is warranted.

Developmental Disabilities Eligibility:

There were two comments referring to the eligibility criteria for admission to the waiver posed by the Alabama Disability Advocacy Program (ADAP): 1) "ADAP is concerned that the provision in the proposed renewal deeming ICAP scores insufficient to support and eligibility 'when maladaptive behavior causes the ICAP to qualify an otherwise borderline individual' by introducing a level of subjectivity in to the determination that may be abused. 2) The eligibility criteria and process for annual redeterminations outlined in the proposed renewal is subject to abuse" and "the requirement of an annual update to the original psychological evaluation constitutes and inappropriate burden that ADMH has historically shifted to the waiver beneficiary."

ADMH Response:

1) The language referenced in these comments was unchanged from previous waiver documents. The actual waiver document states in Appendix B:6(d) Level of Care Criteria: "If necessary to support a conclusive determination, an ABS will be required, but only when maladaptive behavior appears to be the only factor causing the ICAP to qualify an otherwise borderline individual." The DD Division maintains, that the use of the Adult Behavioral Scale (ABS) in addition to the ICAP in certain eligibility determinations mentioned above, removes subjectivity by using an additional instrument results that provide additional supportive and objective information to the QIDP making eligibility decision.
2) In Appendix B:6 (f)(a) of the ID waiver states: "Written reference to and update of the original psychological evaluation which documented the applicant's intellectual disabilities or of a more recent full assessment, all documents to be kept on file and produced if requested." The QIDP responsible for making the eligibility decision must document that the original psychological information submitted at the time of the individual's initial entry onto the waiver has been reviewed. Another psychological would

only be indicated if the person was admitted to the waiver before age 18. After age 18, another psychological evaluation is necessary, but testing will be done by the DD Division's Regional Office incurring no cost to the individual.

Person Centered Planning:

Comments by ADAP indicate the importance of true person-centered planning in the development of services needed to support the person fully, especially within his/her community.

ADMH Response:

ADMH DD Division recognized the need for true person-centered planning and its relationship to development of the plan of care and service delivery. The Division has formed a workgroup to address person-centered planning that is piloting a template for use by all case managers throughout the state. An employee of ADAP is a member of the workgroup and has been involved in all aspects in the development of a more robust process. ADMH/DD Division agrees to the importance of person-centered planning and will monitor progress in the implementation of a consistent approach. With this effort, the DD Division applied for and was one of fifteen states awarded Technical Assistance from the National Center on Advancing Person-Centered Practices and Systems (**NCAPPS**) monthly.

Choice:

ADAP comments state they represent participants on the ID waiver who were not provide choice among service providers.

ADMH Response:

The ADMH/DD Division's Operational Guidelines requires the service coordinator to offer choice in service providers to individuals at the time of initial entry to the waiver, at the time of the annual re-evaluation and any time the waiver participant request a change in service providers. This is applicable *to all individuals receiving services. Individualized incidents where the person is not afforded choice are* investigated by the DD Regional Office and problems rectified accordingly.

Service Definitions and Provider Qualifications:

The following questions and/or comments were posed regarding:

1) The five-hour limit for the provision of Day Habilitation Services stating that the limit causes a gap in services for individuals living in the home with family.
2) The requirement of 60-day supervisory visits for personal care providers.
3) Provider requirements of conducting monthly checks of the exclusion list on certain professional staff.

4) The qualifications of residential aides
5) Clarification of the definition of clusters of residential facilities mentioned in the service limitations and questions heightened scrutiny process and co-operational sites.
6) Clarification on the limit to the number of persons served in Specialized Medical Homes
7) Combining Personal Care and Companion Services into one service
8) Clarification for provision of Community Experience services for persons receiving residential services.
9) Language requiring OT/PT/ ST and Skilled Nurses to use the electronic visit verification system to track each visit.
10) Language that prohibits Residential Service providers from owning the homes of persons receiving Supported Living Services.
11) Suggested changes to Residential Services to exclude participants ages 3-14 years of age
12) Addition of the use of OT, PT and ST assistance for service delivery
13) The concern that Community Day Habilitation and Community Prevocational Services will cause confusion among service providers.
14) Addition of Peer Services to improve individual access to the community.
15) Concerns expressed that changing Specialized Medical Equipment (SME) to Assistive Technology may prevent those individuals needing SME from receiving it.
16) Comments objecting to the service provider qualifications for Assistive Technology to have an established place to conduct business in Alabama were noted.
17) Questions regarding the requirement for TB skin test for all staff delivering services to individuals.
18) Concerns were expressed regarding the removal of Community Specialists service and the self-directed option for Positive Behavioral Supports due to underutilization.
19) Suggestions to add transportation as a waiver service.
20) Questions as to if the state will create a list of independent providers for use for self-directed services.
21) The limits placed on personal care may cause a disincentive to integration by improperly shifting he states responsibility to provide appropriate care to family members thus creating a structural incentive away from the most integrated setting.

ADMH Response:

ADMH will address each question individually:

1) The five-hour limit for Day Habilitation service is not new to this waiver renewal has been in existence for years. ADMH/DD Division encourages the use of other appropriate services to cover identified gaps for any individual affected. Increasing the hours more

than five daily may significantly affect budget and will be discussed for inclusion in future budget requests.

2) Supervisory visits have been a requirement of personal care services prior to this renewal. The specification required the visit be completed by a QIDP every ninety-days (90), rather than sixty (60). The frequency of the visit has been changed for consistency among service providers by having the same requirement found in the other 1915(c) waivers in the state. The rate established includes the supervisory component.

3) The Centers for Medicaid and Medicare Services (CMS) requires monthly checks the OIG exclusion lists of all service providers for individual employees. The Alabama Medicaid agency provides on its website, Medicaid.alabama.gov this information: "Any provider participating or applying to participate in the Medicaid program must search Medicaid's Exclusion List, the List of Excluded Individuals and Entities (LEIE), and the System for Award Management (SAM) website on a monthly basis to determine if any existing employee or contractor has been excluded from participation in the Medicaid program. Also, any provider participating or applying to participate in the Medicaid program must search all three lists prior to hiring staff to ensure that any potential employees or contractors have been excluded from participating in the Medicaid program. For further details on screening of current and potential employees and contractors, see Chapter 7, Section 7.3.1 of the Provider Manual. Alabama Medicaid Agency's exclusion list can be found at:
https://medicaid.alabama.gov/content/8.0_Fraud/8.7_Suspended_Providers.aspx

- The Office of the Inspector General maintains a national list of all individuals who are excluded from receiving reimbursement from Medicare and Medicaid. For a comprehensive list of all individuals, go to http://oig.hhs.gov/fraud/exclusions.asp. Additionally, the SAMs website contains a single comprehensive list of individuals and firms excluded by Federal government agencies. This list is located at https://www.sam.gov." All three lists must be checked monthly and providers should document the date reviewed each month and/or print the page(s) for proof of exclusion checks.

4) The qualifications for Residential Aides was inadvertently omitted from the waiver and has now been added in the provider specifications. Qualifications for the Habilitation Aide are: the person must possess a high school diploma or equivalent, ability to perform essential functions of the job and be able to follow plans of care.

5) ADMH issued its policy on Residential Settings that defines clusters as "multiple programs, or residential settings located on the street, court, etc. where these type setting constitute more than 25% of all settings." This policy applies to new settings. The DD Division is following *Settings That Isolate Guidance* issued by CMS on March 22, 2019 regarding heightened scrutiny that removed the co-operational language.

6) Specialized Medical Homes limits the capacity to four (4) individuals who have at least three (3) significant medical conditions. The staff ratio for these homes remains consistent requiring 2 staff members present always, with one of the staff being a LPN or RN. ADMH/DD Division limits the capacity due to 4 to effectively serve those in the home and ensure the individuals' health and safety. Any number greater than 4 with the same level of staff may comprise health and safety.

7) The workgroup recommended that ADMH/DD Division combine personal care service and companion service into one general service. ADMH did discuss this suggestion with AMA Long Term Care. Due to the complexity of some individuals, personal care may be more appropriate, while others may need only companion services. Until more research can be performed on the advantages/disadvantages of combining the services so a sound decision can be made, the services were not combined in this waiver renewal.
8) The service definition for Community Experience initially contained language that prevented anyone receiving residential services from receiving it. The language was removed from the Limitations section of the definition, however, was inadvertently missed in the service definition itself. The language has been removed from the renewal document.
9) Initially, AMA required the EVVMS to collect visits made by OT/PT/ST, LPN and RN visits in addition to personal care. Since its implementation, however, ADMH/DD Division advocated for the removal of the requirement for Occupational, Physical, and Speech Therapies at the request of providers. AMA did remove the requirement for these disciplines effective February 1, 2019. LPN/RN services, even though not required under the Cure's Act, is included with the EVVMS for consistency across all HCBS 1915(c) waivers statewide. However, ADMH/DD Division will advocate to remove the EVVMS requirement for LPN/RN services.
10) Supported Living services are designed to allow persons served to live in housing free from conflict of interest and of their own choosing, with other people they choose. Therefore, the DD Division reviewed other state waivers and similar services in its research to design Supported Living service. Most of the waivers reviewed have the same restrictions. To remove any indication of conflict, the Division incorporated the limit.
11) In its initial renewal, ADMH/DD Division had limited Residential service provision to those persons over 14 and utilize in home supports to keep the family units together for those participants age 3 to 14 of age. However, the DD Division made the decision to remove the language on the limitation as a part of the waiver renewal. Residential services remain available to all eligible individuals, regardless of age.
12) The use of Occupational, Physical and Speech therapist assistants to provide services in the waiver has been proposed prior to this waiver renewal. However, state regulations require that an assistant be supervised by licensed therapist in each discipline. Since providers would be required to have both a licensed therapist and an assistant, the DD

Divisions' costs to provide the service would increase. Without additional funding allocation to support the additional personnel for the delivery of this service, the use of the assistants was not added into the waiver service definitions.

13) ADMH/DD Division will provide training on all new services, including Community Day Habilitation and Community Prevocational services, once the waiver is approved to minimize any confusion the service provider experiences.
14) The workgroup did recommend the addition of a peer support service to the ID waiver. This service was explored prior to the waiver renewal and most waivers reviewed utilize the service for the MI/SA populations. Use of peer support services for the ID population is limited across the nation so a model of this service could not be located. More research is needed to fully develop the service as the group recommended.
15) To offer a broader array of technology options for individuals served on the waiver that could increase independence, but not be medical in nature, SME was changed to Assistive Technology. Medical equipment not covered by state plan services is included in the service definition to ensure that any participant receives services as indicated in his/her person-centered plan.
16) The AL Board of Home Medical Equipment Services Providers Law, Section 34-14C-1 requires all Home Medical Equipment Service Providers (HME) must obtain a license before they can operate in the state of Alabama. Home Medical Equipment Services is defined as "the delivery, installation, maintenance, replacement of, or instruction in the use of medical equipment and related supplies used by a sick or disabled individual to allow that individual to obtain care or treatment and be maintained in a residential setting. This language was placed into the service provider section for Assistive Technology to ensure providers comply with state law.
17) ADMH/DD Division is fully aware of the recommendations surrounding TB skin testing by the Center for Disease Control as referenced in the comments, however; AMA issued its TB policy to all operating agencies that it expects all ID waiver providers to follow. The policy was distributed to all service providers.
18) Community Specialist Services has been a service in the waiver for several years. Since its inclusion in the waiver, it has been utilized only twice. Providers and participants expressed confusion of the service since it appears to duplicate Targeted Case Management services. Self-directed Positive Behavioral Support services has been an option in service since 2014 and has never been utilized. The decision to remove both was based on historical data collect for five (5) or more years.
19) Supported Employment Transportation is a service in the waiver and designed to address barriers to employment. Transportation is also a component of personal care service, day habilitation service and included in the residential rate to providers. Non-Emergency Transportation service is available to Medicaid recipients. The DD Division agrees that transportation remains a significant issue in the rural counties, funding is not currently available to add the service. The Division will work with participants/ families and stakeholders to seek additional funding for the addition of this service into the

waiver, while in the meantime, explore available options that may already exist for participant use.

20) The DD Division does not currently have plans to create a list of independent providers due to lack of staff required to maintain a current list.
21) The twelve hour per day limit on personal care for those individuals living in the home with families should not constitute a disincentive to integration. The limitations to the services include that services are not designed to remove the family responsibility for the individual's care. Personal care services include personal care transportation to address the individual's need for access into the community that supports full integration.

Other Comments:

ADAP expressed concerns that the certification factors do not promote integrated, quality outcomes that are meaningful for waiver participants.

ADMH Response: ADMH agrees that its current certification process does not truly capture individual outcomes. The Certification and monitoring process are currently under revision to more appropriately measure and review provider outcomes related to community integration.

There were three (3) comments to changing individual authorization for services to reflect the individual eligibility period instead of following the fiscal year to avoid delays in service delivery.

ADMH Response: Providers have a 365-day filing limit to file for services rendered. The DD Division has revised its service approval process to minimize delays and continues to monitor and address problems as identified so services and provider payments are provided timely.

There were three comments regarding a person's appeal process and provider appeal process for non-payment of service rendered.

ADMH Response: A person's due process rights are explained fully in Appendix F of the waiver renewal. Individual/families/guardians sign receive the information on appealing any adverse action whenever it occurs. Every effort is made to ensure provider payments are made timely. However, individual occurrences of non-payment are investigated thoroughly, and payments made based on the outcome of the investigation.

Other comments and questions posed were more related to 1) a personal and individual situation that will be referred to the appropriate regional office to contact. Others seemed to be questions more related to daily operation or for provider training and will be responded to separately.