

## Community Pathways Waiver

### IRAI MD 0023.R08.00

#### Attachment #1: Transition Plan:

- Please provide the new transition deadline since June 2022 was removed as the previous deadline for transition.

Response: The new projected completion date is December 31, 2024.

**CMS: Updated, no additional information required**

#### Attachment #2: HCB Settings Waiver Transition Plan:

- Please include the following statement of assurance for the HCB settings transition plan under Attachment #2: *The State assures this waiver renewal will be subject to any provisions or requirements included in the State's most recent and/or approved home and community-based settings Statewide Transition Plan. The State will implement any CMS required changes by the end of the transition period as outlined in the home and community-based settings Statewide Transition Plan.*

Response: The State will add the requested language to the portal.

**CMS: Updated, no additional information required**

#### Appendix A Waiver Administration and Operation

- **Appendix A-2-a: Medicaid Director Oversight of Performance When the Waiver is Operated by another Division/Unit within the State Medicaid Agency**
  - OLTSS indicates that it will meet regularly and continuously please be specific in the frequency of oversight.

Response: OLTSS and DDA meet monthly and more frequently on topic specific items.

**CMS: Updated, no additional information required**

- **Appendix A-6-d: Assessment Methods and Frequency**
  - CMS requests that the Medicaid agency provide additional detail regarding ensuring that the operating agency is exercising its responsibilities and that there are procedures that provide for the reporting of assessment results to the Medicaid agency?

Response: The State will add the following language to this section in the portal: *The DDA and OLTSS meet monthly and discuss any issues that may require additional guidance.*

**CMS: Updated, no additional information required**

## **Appendix B Participant Access and Eligibility**

### **Appendix B-1-b Additional Criteria:**

- Please explain the additional criteria: *The individual does not currently reside in an institution for 30 consecutive calendar days or has a proposed date for discharge from the institution in which the individual does reside.*

Response: Applicants and participants can not reside in an institution and also receive waiver services. Individuals residing in an institution with a discharge date can apply.

**CMS: Updated, no additional information required**

- **Appendix B-3-c: Reserved Waiver Capacity**
  - The state will need to indicated under each purpose under reserved waiver capacity that all waiver participants enrolled in the waiver have comparable access to all services offered in the waiver?

Response: The state will add under each reserved capacity the following sentence: *All waiver participants enrolled in the waiver have comparable access to all services offered in the waiver.*

**CMS: Updated, no additional information required**

- Previous Waiver Participants with New Service Need- Please explain the time period for when this will apply (reserve capacity): *“Previously enrolled DDA waiver participants for whom the waiver service needs were met will exit the waiver. If a new service need develops at a later time, they may reapply to the waiver.”*

Response: There is no limit to the time period. If a person was previously enrolled in the waiver, had their needs met, and then developed a new need for services, they can reapply to the waiver.

**CMS Response: Please add this clarification to WMS.**

**4/12/23 CMS Response: NOT UPDATED**

**4/13/23 State Response: This language is already included in WMS; “Previously enrolled DDA waiver participants for whom the waiver service needs were met will exit the waiver. If a new service need develops at a later time, they may reapply to the waiver. There is no limit on the time period that a participant exited the Waiver in order for them to reapply.”**

- End the Wait Act of 2022-Please explain: *“The purpose of this reserved capacity category is to support individuals currently on the waiting list to access Waiver services, in accordance with the End the Wait Act of 2022 (SB 636). The law requires the Department to develop plans to reduce the DDA waitlist by 50% beginning in fiscal year 2024.”* Are these plans still in development? If referenced plans have been established add more detail regarding what they are. Please confirm this legislation has passed?

Response:

- [Maryland Department of Health - Waiver Programs - Waitlist and Registry Reduction \(End the Wait Act\)](#) was passed by the Maryland General Assembly. It was approved by the Governor on May 16, 2022 and took effect October 1, 2022. MDH submitted plans to the Governor and required legislative committee chairs. Reference: [SB 636 \(Chapter 464 of the Acts of 2022\) - Waiver Programs - Waitlist and Registry Reduction \(End the Wait Act\)](#)
- The DDA’s waitlist average includes approximately 4,000 individuals as of November 2022. To reduce the waitlist for the

DDA-operated waiver programs by 50%, the DDA will need to enroll 2,000 participants from the waitlist to a waiver program over a five year period. This will result in enrollment of 400 participants annually across all three programs.

- Crisis Resolution-Please explain: *“The purpose of this reserved capacity category is to support individuals identified to be in the crisis resolution eligibility category who are in immediate need of services, to access needed services.”* Add more detail about what the immediate service needs are.

Response:

- People that meet this category have been determined to meet one of the following criteria:
  - Homelessness or housing that is explicitly time-limited, with no viable non-DDA-funded alternative;
  - At serious risk of physical harm in the current environment;
  - At serious risk of causing physical harm to others in the current environment; or
  - Living with a caregiver who is unable to provide adequate care due to the caregiver’s impaired health, which may place the applicant at risk of serious physical harm.
- They are immediately supported with emergency respite, behavioral supports, and personal supports (as applicable) while exploration and coordination of additional services are conducted based on their individualized circumstances.
- They can also access any meaningful day (e.g. Employment Services, Community Development, Day Habilitation, Medical Day, etc.), support services (i.e. Assistive Technology, Nursing Support Services, etc.), and residential services based on assessed needs.

**CMS Response: Please add the highlighted information to WMS.**  
**4/12/23 CMS Response: Updated, no additional information required**

- Waiting List Equity Fund-Please explain: *“As per Maryland Statute, Health General Article 7-205, the Waiting List Equity Fund is to support individuals who are in crisis and need emergency services, individuals on the waiting list, and individuals transitioning from a State Residential*

*Center.*” How does this category differ from the Crisis Resolution and End the Wait List Act designations?

Response:

- This category supports people transitioning from State residential centers and people on the Waiting List in crisis prevention with the oldest caregiver.

**CMS Response: Please add the clarifying information to WMS.**  
**4/12/23 CMS Response: Updated, no additional information required**

- Families with Multiple Children on Waiting List-Please explain: *“The purpose of this reserved capacity category is to support families seeking support that have more than one child on the DDA Waiting List.”*

Response:

- Families may have more than one child on the waiting list that applied at different times. The children may also have different waiting list priority categories (i.e. crisis resolution, crisis prevention, or current request).
- This category supports the needs and stability of the entire family by providing all children on the waiting list, regardless of application date or priority category, an opportunity to apply for the waiver.

**CMS Response: Please add the following statement to the waiver application, *“This category supports the needs and stability of the entire family by providing all children on the waiting list, regardless of application date or priority category, an opportunity for entry into the waiver.”***

**4/12/23 CMS Response: Updated, no additional information required**

- Emergency-Please explain: *“The purpose of this reserved capacity category is to support individuals in immediate crisis or other situations that threatens the life and safety of the person.”* How does this differ from the Crisis Resolution designation?

Response: These are people who are in crisis that are not on the waiting list and therefore unknown to the DDA.

**CMS Response: Please add the clarifying information to WMS.**  
**4/12/23 CMS Response: Updated, no additional information required**

- Please explain how MSDE residential age out is different or the same as foster care.

Response: These are people who are aging out of residential services under the Maryland State Department of Education (MSDE). They are not in the Department of Human Services (DHS) foster care system.

**CMS Response: Please add a statement attesting that persons transitioning from MSDE are not in the DHS foster care system.**

**4/12/23 CMS Response: Updated, no additional information required**

- **Appendix B-6-j: Maintenance of Evaluation/Reevaluation Records**

- Please provide detailed information on the location of where records of evaluations and re-evaluations of level of care are maintained and for how long.

Response:

- Information is located in the State's information technology system - *LTSSMaryland*.
- "*LTSSMaryland*" is an electronic data management system, developed and supported by the MDH. It is used to create, review, and maintain records about:
  - An individual's eligibility status for DDA-funded services; and
  - The individual's person-centered plan, and services and funding authorized by the DDA.
- Information is retained in *LTSSMaryland* under the Programs > Level of Care module.
- The *LTSSMaryland* system currently maintains the full history of documents.

***CMS: Updated, no additional information required***

- **Appendix B-7-b: Maintenance of Forms**

- Please provide detailed information regarding the location where documents are maintained and for how long.

Response:

- LTSS*Maryland* retains copies of the “Freedom of Choice” form.
- Information is retained in LTSS*Maryland* under the Programs > Application > DDA Waiver Application Packet module.
- The LTSS*Maryland* system currently maintains the full history of documents.

***CMS: Updated, no additional information required***

## **Appendix C Participant Services**

### **Appendix C1/3-Service Specification**

- The changes previously made within the waiver services have been in effect prior to the effective date of this renewal. Please remove all legacy effective dates throughout this section.

Response: MDH will remove legacy effective dates.

***CMS: Updated, no additional information required***

- **Appendix C-2-a Criminal History/Background**

- The state has left in language regarding draft regulations undergoing review. Please clarify if these regulations have been passed. If not, add language to identify when or target deadline for when regulations will be finalized.

Response:

- MDH is finalizing regulations for public input.
- The target implementation date is July 2023.
- The language will be updated to reflect this date.

MD.0023.R08.00  
CMS Informal Comments (combined)  
Submit: 03/03/2023  
2<sup>ND</sup> Submission: 04/05/2023  
3<sup>RD</sup> Submission: 04/12/2023

**CMS: Please remove draft language and amend the waiver when the regulations are approved and in place.**

**4/12/23 CMS Response: NOT UPDATED**

- For clarity and understanding, criminal background checks are not required for people who interact with or assist as a friend or natural support, meaning unpaid assistance. Is this correct? These individuals are not paid by Medicaid or waiver funds.

Response: Correct

**CMS: Updated, no additional information required**

- Please clarify: an individual will have successfully passed a criminal background check if he/she has been convicted...not more than 10 years ago? So, an individual can be convicted of fraud 11 years ago and be allowed to be a provider of service?

Response: Yes. An individual can be convicted for fraud 11 years ago and be allowed to be a provider of service. However, please note COMAR 10.22.02.11B, provides the DDA discretion to prevent an individual from providing services, even in a situation where there was, for example, an 11 year old fraud conviction.

**CMS Response: Please add the highlighted information to WMS**

**4/12/23 CMS Response: Updated, no additional information required**

#### **Appendix C-2-d PCS Legally Responsible/relatives:**

- Please explain/identify how often DDA will review payments were made only for services rendered.

Response: Self-directed services are reviewed as part of the Quality Improvement Organization (QIO) utilization review process. The QIO will review payments quarterly based on random sampling.



## Appendix D: Participant-Centered Planning and Service Delivery

- **Appendix D-1-i: Maintenance of Service Plan Forms**

- Please provide additional information regarding where the copies of service plans are maintained.

Response:

- *LTSSMaryland* retains copies of the Person Centered Plans.
- Information is retained in *LTSSMaryland* under the Programs > POS/PCP/POC module.
- The *LTSSMaryland* system currently maintains the full history of documents.

***CMS: Updated, no additional information required***

- **Appendix D-2-a: Service Plan Implementation and Monitoring**

- Provide additional information regarding the Effectiveness of back-up plans.

Response:

- Each person's unique circumstances, back-up strategies, and effectiveness will vary.
- Back-up strategies may include: (1) assistive technology; (2) back-up staffing plans; and (3) other strategies as identified through an approved Behavior Support Plan or Nursing Care Plan.
- *LTSSMaryland* also includes a "My Emergency Plan" and My Back-Up Plan" form related to specific questions discussed with team as noted below:

MD.0023.R08.00  
 CMS Informal Comments (combined)  
 Submit: 03/03/2023  
 2<sup>ND</sup> Submission: 04/05/2023  
 3<sup>RD</sup> Submission: 04/12/2023

My Emergency Plan	
I have an emergency plan:	Yes
I am aware of the emergency plan:	Yes
My team is aware of the emergency plan:	Yes
I am prepared to shelter in place:	Yes
I have an emergency kit:	Yes
Where I can relocate to in case of an emergency:	I will relocate with my family to our relatives homes or a hotel.
I registered my needs with:	N/A
I require a generator:	No
The steps I will take in case of a natural disaster:	I will stay home with my family, we have food, water and emergency supplies.
Back-up plan for power outages:	I will stay home with my family, we have food, water and emergency supplies.

  

My Back-Up Plan	
The steps I will take if provider does not show up:	I will stay at home with my mom.
The steps I will take if my job or day/work program is cancelled or closes:	I will stay at home with my mom.
Plan for future living arrangements if something happened to my current caregiver:	I will need to go into residential services.

- Back-up plans are reviewed by the CCS during quarterly monitoring to ensure strategies continue to meet the needs of the participant.

**CMS: Updated, no additional information required**

## Appendix E: Participant Direction of Services

- **Appendix E-2-a-ii:**
  - Please revise the language in the text box from “awaiting language from DDA” to what is the current practice, understanding that the state will amend the waiver when state regulations are passed regarding criminal background checks.

### Response:

- Appendix E-2-a-ii relates to Participant Decision Making Authority; not criminal background checks.
- MDH will amend Appendix C-2-a Criminal History/Background as noted above.

**CMS: Please remove draft language and amend the waiver when the regulations are approved and in place.**

**4/12/23 CMS Response: NOT UPDATED**

- **Appendix E-2-b-iv- Participant Exercise of Budget Flexibility**

MD.0023.R08.00  
CMS Informal Comments (combined)  
Submit: 03/03/2023  
2<sup>ND</sup> Submission: 04/05/2023  
3<sup>RD</sup> Submission: 04/12/2023

- Please provide detailed information regarding how the changes to the budget and service plan are documented? If applicable, the circumstances when changes are subject to prior review and the entity responsible for conducting this review?

Response:

- Changes to the Person Centered Plan (PCP) are documented in *LTSSMaryland* via a Revised PCP in the PCP detail service authorization section.
- The detailed service authorization section lists the DDA funded services including the specific service name, units per month, annual service cost, and provider status.
- The total annual cost is the self-directed budget allocation. Participants use this budget allocation to create their individual self-directed budget sheet. As needed participants, with the support of their team, make changes to the self-directed budget sheet which is submitted to the Financial Management and Counseling Services (FMCS) for review.
- If there is a new health and safety service need assessed, the participant, along with their team, legal guardian, or their designated representative (as applicable) notifies the CCS.
- The CCS will revise the PCP and associated documents are completed to reflect the health and safety requested service(s) which is then submitted to DDA Regional Office for review.
- Participants with the support of their team may move funding across approved budget service lines as per the DDA policy and guidance by using a Budget Modification.

***CMS: Updated, no additional information required***

## **Appendix G: Participant Safeguards**

- **Appendix G-1-b: State Critical Event or Incident Reporting Requirements**
  - The State does not reference exploitation as a reportable incident type. Update Appendix G to include exploitation as an incident type required for review.

Response:

- The State will revise language to reflect: Type 1 Incidents include: abuse (*including exploitation and financial exploitation*), neglect, death, hospital admissions or emergency room visits, injury, medication error, and choking. Abuse includes: physical abuse, verbal abuse, mental abuse, sexual abuse, involuntary seclusion, and any action or inaction that deprives an individual in

MD.0023.R08.00  
CMS Informal Comments (combined)  
Submit: 03/03/2023  
2<sup>ND</sup> Submission: 04/05/2023  
3<sup>RD</sup> Submission: 04/12/2023

DDA funded services of the ability to exercise their legal rights, as articulated in State or federal law including seclusion.

- The State does not reference financial exploitation as a reportable incident type. Update Appendix G to include financial exploitation as an incident type required for review.

**CMS: The State indicated that it would add exploitation into its response for Appendix G-1b. Update the appendix accordingly.**

**4/12/23 CMS Response: Updated, no additional information required**

Response:

- Appendix G will be updated to reflect financial exploitation as an incident type.
- The State indicates that "DDA providers must also complete an Agency Investigation Report (AIR)," but does not detail how to submit this form. Specify the methods of reporting and how these forms can be found and completed.

**CMS: We confirm the state updated the application to include financial exploitation. We request no additional information.**

**4/12/23 CMS Response: Updated, no additional information required**

Response:

- An Agency Investigation Report (AIR) is submitted within the Provider Consumer Information System (PCIS2) within ten (10) business days of discovery of the incident. The AIR document template is found within PORII and is within the original incident report in PCIS2.
- An AIR includes updated information based on the provider's investigation of the incident, which includes the remediation, preventative strategies, and additional supports and services that may be needed.

**CMS: We confirm the state updated the application to include financial exploitation. We request no additional information.**

- **Appendix G-1-d: Responsibility for Review of and Response to Critical Events or Incidents**

- The State does not provide a timeframe for informing waiver participants (or participant's family or legal representative, as appropriate) of investigation results. Update Appendix G to include when waiver participants are informed of investigation results.

Response:

- Participants and representatives are informed within 10 business days of the issuing of the investigation results.

**CMS: Does the information provided in the response also apply to Type 2 incidents investigated by DDA? If it is, please add language to the waiver renewal application.**

**4/12/23 CMS Response: Updated, no additional information required**

## **Appendix I: Financial Accountability**

- **Appendix I-2-a: Rate Determination Methods**

- The state references American Rescue Plan rate increases in both Appendix J and in the Major Changes portion of the waiver application but does not reference the rate increases in Appendix I-2-a. Update Appendix I-2-a to include an explanation detailing the amount of the rate increase, how the increase was calculated, and which services are affected.

Response:

- Appendix I-2-a will be updated to reflect: "In April 2021, the DDA increased the FPS rates in PCIS2 by 5.5 percent using savings from the American Rescue Plan Act of 2021 for all HCBS waiver services. The 5.5 percent was calculated by applying 75% of ARPA savings towards provider rates as directed by the State legislature."
- As noted in our approved Appendix K:
  - The 5.5 percent increase in rate reimbursement is the same for all waiver service providers who bill through the PCIS2 system.

MD.0023.R08.00

CMS Informal Comments (combined)

Submit: 03/03/2023

2<sup>ND</sup> Submission: 04/05/2023

3<sup>RD</sup> Submission: 04/12/2023

- The 5.5 percent increase was applied to all rate-based services and excluded the following services: Assistive Technology and Services; Environmental Modifications; Family Caregiver, Training, and Empowerment Services; Individual and Family Directed Good and Services; Live-In Caregiver Supports; Participant Education, Training, and Advocacy Supports; Remote Support Services; Respite (Camp); Support Broker; Transition Services; Transportation; and Vehicle Modifications.
- This rate increase did not impact, or change in any way, Maryland's current rate methodology for all of the above waivers, which addresses COLA.
- 

**CMS: We confirm the state updated the application to include financial exploitation. We request no additional information.**

- **Appendix I-6: Payment for Rent and Food Expenses of an Unrelated Live-In Caregiver: *The State does not describe the method of payments for a live-in caregiver for reimbursement.***
  - Update I-6 to describe the method of reimbursement for live-in caregivers

Response: Appendix I-6 will be updated to reflect:

- Live-In Caregiver Supports is an OHCDs service and the reimbursement method for these services are outlined in section Item I-3-g-ii.

**CMS: The State indicated that live-in caregiver supports follows the OHCDs reimbursement. No additional questions.**