

GUIDANCE FOR THE DEVELOPMENTAL DISABILITIES ADMINISTRATION STAFF TO AUTHORIZE FUNDING IN EXCESS OF INDIVIDUAL COST LIMIT OF A DDA WAIVER PROGRAM OR REFER DDA WAIVER PARTICIPANT TO ANOTHER HOME AND COMMUNITY BASED WAIVER PROGRAM

BACKGROUND

The State of Maryland currently administers eight Medicaid 1915(c) Home- and Community-Based Services Waiver programs (each a “HCBS Waiver”) including: Autism, Brain Injury, Community Options, Community Pathways, Community Supports, Family Supports, Medical Day Care, and Model Waivers.

The Maryland Department of Health’s Developmental Disabilities Administration (“DDA”) administers three of these HCBS Waivers (each a “DDA Waiver”): the Community Pathways Waiver (“CPW”); the Family Supports Waiver (“FSW”); and the Community Supports Waiver (“CSW”). Each DDA Waiver program funds a variety of services, similar and different from one another. The FSW and CSW have individual cost limits of \$12,000 per year and \$25,000 per year, respectively. The CPW does not have an individual cost limit.

An eligible individual may only be enrolled in one HCBS Waiver at a time. To be eligible for a DDA Waiver, the individual must have a developmental disability and meet all technical, medical and financial criteria.

Each applicant is assessed to determine the appropriate DDA Waiver to support his or her life trajectory goals as well as health and safety needs prior to being enrolled in one of the DDA Waiver programs. The assessment process considers the individual’s level of service need and projected cost of DDA Waiver services, including any available natural, community, local, State, and federal supports that may supplement DDA Waiver services. This assessment process determines whether the individual’s life trajectory goals as well as health and safety needs require: (1) services covered under one of the three DDA Waivers; and (2) services whose cost exceed the individual cost limit.

Costs associated with targeted case management, assistive technology, environmental modifications, vehicle modifications, staff recruitment and advertising, fiscal management services, and Medicaid State Plan services are not to be included in the assessment of projected cost for the individual cost limits of the FSW and CSW. If the applicant’s initial level of service needs or projected cost of DDA Waiver services exceeds the individual cost limits of the FSW and CSW, then the CPW may be the appropriate DDA Waiver for that applicant.

If after initial enrollment, the assessed needs exceed the individual cost limit of the DDA Waiver in which the individual is currently enrolled, then the Waiver participant may be eligible for the DDA to authorize funding for services beyond the individual cost limit.

If after initial enrollment, the assessed needs of the DDA Waiver participant cannot be supported in their currently enrolled DDA Waiver program, then the Waiver participant may be eligible for the DDA to refer to another DDA Waiver or other Maryland Medicaid Waiver program that

includes services to meet the assessed need. There are two circumstances when a DDA Waiver may not meet the needs of a Waiver participant including:

- (1) The Waiver participant has an assessed need for meaningful day services that are not available from other natural, community, local, State, and federal supports and not available within the DDA Waiver in which he or she is currently enrolled; or
- (2) The Waiver participant has an assessed need for residential services that are not available from natural, community, local, State, and federal supports and not available within the DDA Waiver in which he or she is currently enrolled.

In these situations, a referral to another HCBS Waiver should be considered. A referral to another HCBS Waiver program does not guarantee the individual will be enrolled. Each HCBS Waiver program has specific entrance selection criteria, and a specified number of participants that can be served. Some waiver programs maintain a waiting list or registry upon which an applicant may be placed.

PURPOSE

After enrollment in a DDA Waiver, a Waiver participant's circumstances and needs may change such that the DDA Waiver in which he or she is currently enrolled may no longer meet his or her needs. Based on the assessed need to support the Waiver participant's life trajectory goals and assure the Waiver participant's health and safety, the DDA will determine whether the Waiver participant needs new services or an increase in current services.

This guidance sets forth the criteria the DDA will consider in approving or denying a DDA Waiver participant's request to either: (1) exceed the individual cost limit of the CSW or FSW; or (2) change between one of DDA's three Medicaid 1915(c) HCBS Waiver programs.

POLICY

In accordance with the following criteria and process, the DDA may either: (1) authorize funding for DDA Waiver services for the Waiver participant in excess of the individual cost limit set forth in the FSW or CSW (in which the Waiver participant is enrolled); or (2) refer the Waiver participant for enrollment in a different DDA Waiver.

If the assessed needs of the Waiver participant cannot be supported by the DDA Waiver in which he or she is currently enrolled, the Waiver participant can be referred to another DDA Waiver program that has an available slot (for which the participant meets the criteria) and includes services to address the new assessed need.

All reserved priority categories for which the participant meets the criteria must be explored.

The participant can remain in the current waiver program if the assessed need is to support the participant's life trajectory goals, does not impact health and safety, *and* another DDA Waiver program option is not available at that time.

If the assessed need is health and safety related and another program option is not available at that time, the participant will be dis-enrolled from the current waiver, given the opportunity to request a Fair Hearing as further specified in the Waiver application Appendix F, and be placed on the DDA Waiting List until an opportunity is available.

Criteria for DDA Authorization of Funding in Excess of Individual Cost Limit

DDA's Regional Director will *authorize* funding in excess of the individual cost limit for a Waiver participant currently enrolled in either the FSW or CSW if:

The Waiver participant's assessed health and safety needs and life trajectory goals, as documented in his or her Person-Centered Plan ("PCP"), require new or additional services in excess of the individual cost limit of the DDA Waiver in which he or she is enrolled; and

- (1) There are no other natural, community, local, State, or federal services or supports available to meet the Waiver participant's assessed health and safety needs and life trajectory; and
- (2) The PCP or Modified Service Funding Plan Request ("MSFPR") includes documentation that such alternative services and supports have been fully explored and do not meet the participant's new assessed need.

DDA's Regional Director will *deny* the request for funding in excess of the individual cost limit for a Waiver participant currently enrolled in either the FSW or CSW if:

- (1) Service needs are not in excess of the individual cost limit of the FSW or CSW in which the Waiver participant is currently enrolled;
- (2) Service needs are covered under the Medicaid State Plan or other State or federal funding source;
- (3) Service needs are met with available natural and community supports;
- (4) Service(s) requested are not covered under the FSW or CSW in which the Waiver participant is currently enrolled;
- (5) Lack of documentation to demonstrate an assessed need for the service(s) requested; or
- (6) Other reason the Waiver participant's request does not meet the criteria for authorization listed above. Note: Please contact the DDA Federal Programs Unit before finalizing when "other" reason is recommended.

Costs associated with targeted case management, assistive technology, environmental modifications, vehicle modifications, staff recruitment and advertising, fiscal management services, and Medicaid State Plan services are not to be included in the assessment of projected cost for the individual cost limits of the FSW and CSW.

Criteria for DDA Referral for Waiver Participant to Enroll in a Different DDA Waiver

The DDA's Federal Programs Unit will *authorize* a referral for the Waiver participant to enroll in a different DDA Waiver if:

- (1) The Waiver participant's assessed health and safety needs and life trajectory goals, as documented in his or her PCP, require new or additional services that are not covered by the DDA Waiver in which the Waiver participant is currently enrolled; and
 - (a) There are no other natural, community, local, State, or federal services or supports available to meet the Waiver participant's assessed health and safety needs and life trajectory goals; and
 - (b) The PCP or MSFPR includes documentation that such alternative services and supports have been fully explored and do not meet the new assessed need; and
- (2) The requested DDA Waiver has a corresponding waiver slot available; or
- (3) The Deputy Secretary has authorized an amendment requesting to increase slots.

The DDA's Federal Programs Unit will *deny* the request for referral for the Waiver participant to enroll in a different DDA Waiver if:

- (1) Service needs are covered by the DDA Waiver in which the Waiver participant is currently enrolled;
- (2) Service needs are covered under the Medicaid State Plan or other State or federal funding source;
- (3) Service needs are met with available natural and community supports;
- (4) Service(s) requested are not covered under any of the DDA Waivers;
- (5) The requested DDA Waiver has no available slots for which the participant meets the criteria;
- (6) Lack of documentation to demonstrate an assessed need for the service(s) requested; or
- (7) Other reason the Waiver participant's request does not meet the criteria for referral listed above.

PROCEDURE

Step 1 – Development and Submission of PCP and Modified Service Funding Plan Request (“MSFPR”)

The Waiver participant's Coordinator of Community Services (“CCS”) will facilitate development of a PCP and MSFPR with the Waiver participant and their team. The PCP and MSFPR must identify and document:

- (1) The Waiver participant's desired outcomes, goals, and preferences;
- (2) The Waiver participant's assessed health and safety needs;
- (3) The Waiver participant's current services and supports;
- (4) Alternative services and supports (*e.g.*, natural community, local, State, or federal services or supports) explored, whether they are available to the Waiver participant, and if not available, explanation as to why they are not available;

- (5) Services available under the Waiver participant's current DDA Waiver, and alternative DDA Waivers, that will be most appropriate to meet the Waiver participant's desired outcomes, goals, and preferences and assessed health and safety needs.

Note: An annual or revised PCP should be developed when requesting funding in excess of the individual cost limit of the CSW or FSW. An initial PCP should be developed for the waiver program the person is seeking to be referred to an alternate DDA waiver program.

It is important for the team to ensure that the health and safety of the Waiver participant will not be compromised, and the PCP is acceptable to the Waiver participant and his or her legal representative. This should be done as part of the development of the revised PCP and MSFPR prior to submitting the PCP/MSFPR request to DDA. This exploration process and these considerations should be documented in the submitted PCP and MSFPR.

If the services requested by the Waiver participant and his or her team exceed the individual cost limit of or are not covered under the current DDA Waiver, the CCS will explore with the Waiver participant alternative services and supports and ways to modify the proposed DDA Waiver services, while maintaining the Waiver participant's health and safety. For example, such modifications may include arranging for more informal supports, seeking services from other resources or programs, and changing or transferring the Waiver participant's current DDA Waiver funded supports to another DDA Waiver service within their currently enrolled program to meet the unmet need.

If the services requested by the Waiver participant and his or her team exceed the individual cost limit and alternative services and supports or ways to modify the proposed DDA Waiver services cannot be identified while maintaining the Waiver participant's health and safety, the CCS shall submit a revised or annual PCP (as applicable) that exceeds the individual cost limit.

If the assessed services needed are not available under the DDA Waiver in which the Waiver participant is currently enrolled, the CCS shall submit a revised or annual PCP (as applicable) for another DDA Waiver program and include the MSFPR supporting documents in the LTSSMaryland PCP Documentation section.

The CCS's submission of the revised or annual PCP (as applicable) to the DDA Regional Office is considered the Waiver participant's request for the DDA to authorize funding for DDA Waiver services for the Waiver participant in excess of the individual cost limit set forth in the FSW or CSW (in which the Waiver participant is enrolled).

The CCS's submission of an initial PCP to the DDA Regional Office is considered the Waiver participant's request for the DDA to refer the Waiver participant for enrollment in a different DDA Waiver.

Step 2 – DDA Staff’s Initial Review of Initial/Revised/Annual PCP and MSFPR and Recommendation to Final DDA Decision-Maker

The DDA Regional Office’s staff will conduct initial review of the revised/annual PCP and MSFPR as per current processes and policy, applying the criteria set forth in this policy to recommend approval or denial of the Waiver participant’s request to either: (1) authorize funding for DDA Waiver services for the Waiver participant in excess of the individual cost limit set forth in the FSW or CSW (in which the Waiver participant is enrolled); or (2) refer the Waiver participant for enrollment in a different DDA Waiver.

To recommend authorization for funding in excess of the individual cost limit, the RO staff will complete and submit to the RO Director the *DDA Regional Office Family Supports Waiver and Community Supports Waiver Individual Cost Limit Exception Form*, indicating whether the request meets the applicable criteria and on what basis.

To recommend a referral for enrollment in a different DDA Waiver, the RO Staff will complete and submit to the RO Director the *DDA Regional Office Waiver Referral Form*.

The DDA Regional Director shall review the DDA Regional Office’s staff’s recommendation and indicate their decision prior to submission of the *DDA Regional Office Waiver Referral Form* to the Final DDA-Decision Maker.

Step 3 – Review and Determination by Final DDA Decision-Maker

The Final DDA Decision-Maker shall be:

- (1) The DDA Regional Director, for requests to exceed the individual cost limit of the FSW or CSW; and
- (2) The DDA Federal Programs Unit, for requests for referral to another DDA Waiver.

The Final DDA Decision-Maker shall review the form, specific cited parts of the PCP or MSFPR that support the decision and the DDA Regional Office’s recommendation.

The Final DDA Decision-Maker shall complete the final determination form, indicating whether the request meets the applicable criteria and on what basis.

Step 4 – Implementation and Issuance Determination Letter

If the Final DDA Decision-Maker approves the request for exceeding the individual cost limit, then:

- (1) The Final DDA Decision-Maker signs and dates their approval on the form and distributes to DDA Regional Office’s Program Staff; and
- (2) The DDA Regional Office’s Program Staff:
 - (a) Approves the PCP and MSFPR in LTSSMaryland;
 - (b) Uploads the approved form into LTSSMaryland under the *Program - POS/PCP/SP* section for the corresponding revised PCP in the documentation section. Note: The form should be saved and uploaded in this standardized

format - FILE TYPE.FIRST LAST.DATE. For example DDA Individual Cost Limit Exception Form.JohnSmith.9-18-19; and

- (c) Sends a copy of the approved *DDA Regional Office Family Supports Waiver and Community Supports Waiver Individual Cost Limit Exception Form* to the DDA Federal Programs Unit.

If the Final DDA Decision-Maker denies the request for exceeding the individual cost limit, then:

- (1) The Final DDA Decision-Maker signs and dates their denial on the form and distributes to DDA Regional Office's Program Staff; and
- (2) The DDA Regional Office's Program Staff:
 - (a) Denies the PCP and MSFPR in LTSS as indicated on the form;
 - (b) Populates and sends the determination letter, with applicable hearing rights, to the participant and their authorized representative and/or legal guardian (if any); and
 - (c) Uploads the denied form and determination letter into LTSS Maryland under the *Program - POS/PCP/SP* section for the corresponding revised PCP in the documentation section. Note: The form should be saved and uploaded in this standardized format - FILE TYPE.FIRST LAST.DATE. For example DDA Individual Cost Limit Exception Form.JohnSmith.9-18-19;
 - (d) Sends a copy of the denied form and final determination letter to the DDA Federal Programs unit.

If the Final DDA Decision-Maker approves the request for referral to another DDA Waiver, then:

- (1) The Final DDA Decision-Maker:
 - (a) Signs and dates their approval on the form and distributes to DDA Regional Office's Program Staff;
 - (b) Uploads the form into LTSS under the Case Management – Client Attachment. Note: The form should be saved and uploaded in this standardized format - FILE TYPE.FIRST LAST.DATE. For example DDA Regional Office Waiver Referral Form.JohnSmith.9-18-19;
 - (c) Updates the slot tracking tools; and
 - (d) Sends communications to the Eligibility Determination Decision (EDD) to alert them of upcoming Waiver Application for person enrolled in one program applying to another program; and
- (2) The DDA Regional Office's Program Staff:
 - (a) Populates and sends the determination letter, with applicable hearing rights, to the participant and their authorized representative and/or legal guardian (if any);
 - (b) Uploads the letter into LTSS under the Case Management – Client Attachment. Note: The form should be saved and uploaded in this standardized format - FILE TYPE.FIRST LAST.DATE. For example DDA Regional Office Waiver Referral Form.JohnSmith.9-18-19; and
 - (c) Sends an e-mail to the Waiver participant's CCS informing the CCS of the decision and sending a copy of the determination letter as an attachment. Note the email subject line should read "Referral to (insert waiver program name) –

(insert person's LTSSMaryland ID number) Determination. Example: Referral to CSW Determination - ID: 1111111AA111111; and

- (3) The CCS:
 - (a) Completes the DDA Waiver application packet for the corresponding DDA Waiver to which the Waiver participant is referred; and
 - (b) Uploads the “*DDA Waiver Change Request Form*” in the LTSSMaryland Waiver Application Packet – Documentation section. Note: The form should be saved and uploaded in this standardized format - FILE TYPE.FIRST LAST.DATE. For example DDA Waiver Change Request Form.JohnSmith.9-18-19; and
- (4) The DDA Regional Office's Program Staff processes the DDA Waiver Application in accordance with the Authorization to Participate guidance.

If the Final DDA Decision-Maker denies the request for referral to another DDA Waiver, then:

- (1) The Final DDA Decision-Maker:
 - (a) Signs and dates their denial on the form and distributes to DDA Regional Office's Program Staff; and
 - (b) Uploads the form into LTSS under the Case Management – Client Attachment; Note: The form should be saved and uploaded in this standardized format - FILE TYPE.FIRST LAST.DATE. For example DDA Regional Office Wavier Referral Form.JohnSmith.9-18-19; and
- (2) The DDA Regional Office's Program Staff:
 - (a) Populates and sends the determination letter, with applicable hearing rights, to the participant and their authorized representative and/or legal guardian (if any);
 - (b) Uploads the letter into LTSS under the Case Management – Client Attachment. Note: The form should be saved and uploaded in this standardized format - FILE TYPE.FIRST LAST.DATE. For example DDA Regional Office Wavier Referral Form.JohnSmith.9-18-19; and
 - (c) Sends an e-mail to the Waiver participant's CCS informing the CCS of the decision and sending a copy of the determination letter as an attachment.

Attachments

- DDA Regional Office Family Supports Waiver and Community Supports Waiver Individual Cost Limit Exception Form
- DDA Regional Office Wavier Referral Form
- DDA Waiver Change Request Form
- DDA Ltr – Waiver Referral Determination