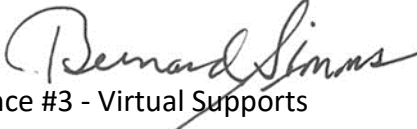**Maryland**
DEPARTMENT OF HEALTH

MEMORANDUM

To: DDA Stakeholders
From: Bernard Simons, Deputy Secretary
Re: DDA Amendment #3 2020 - Guidance #3 - Virtual Supports
Release Date: February 16, 2021
Effective: January 19, 2021

NOTE: Please inform appropriate staff members of the contents of this memorandum.

BACKGROUND

On January 19, 2021, the Centers for Medicare and Medicaid Services (CMS) approved the Maryland Department of Health (MDH) Developmental Disabilities Administration (DDA) Waiver Amendments #3 2020 with an effective date of January 19, 2021.

The purpose of this guidance is to inform stakeholders of changes to the DDA's Medicaid Home and Community-Based Services (HCBS) Waiver programs (*i.e.,* Community Pathways Waiver, Community Supports Waiver, and Family Supports Waiver) (each a "DDA Waiver program") and operations based on the approved amendments.

This guidance applies to Applicants and Participants, Coordinators of Community Services (CCS), DDA Providers, and DDA Staff (e.g., DDA Regional Offices' Staff). This guidance applies to services rendered to participants under both service delivery models: traditional services and self-directed services.

OVERVIEW

Changes set forth in Amendment #3 of the DDA Waiver program applications permits participants to receive the following services via virtual supports, an electronic service delivery method:

1.   Employment Services;
2.   Supported Employment Services;
3.   Community Development Services;
4.   Day Habilitation Services; and
5.   Personal Support Services.

Applicable Services Reference Table

Meaningful Day Services		Residential Services		Support Services (CCS and Waiver Supports)			
X	Employment Services		Community Living – Group Home		Assistive Technology & Services		Nurse Consultation
X	Supported Employment		Community Living – Enhanced Supports		Behavioral Support Services		Nurse Health Case Management
	Employment Discovery & Customization		Supported Living		Coordination of Community Services		Nurse CM & Delegation Svs
	Career Exploration		Shared Living		Environmental Assessment		Participant Ed, Training & Advocacy
X	Community Development Svs				Environmental Modification	X	Personal Supports
X	Day Habilitation				Family & Peer Mentoring Supports		Respite Services
					Family Caregiver Training & Empowerment		Remote Support Services
					Housing Support		Support Broker
					Live-in Caregiver Supports		Transportation Svs
					Nursing Support Services		Vehicle Mods

Standards and Requirements

A.   **Virtual Supports**

1. Virtual supports are an electronic method of service delivery. Virtual supports are not a distinct, separate service under the DDA Waiver programs, but a means by which certain services (listed above) may be delivered to a participant.
2. The purpose of virtual supports is to maintain or improve a participant's functional abilities, enhance interactions, support meaningful relationships, and promote their ability to live independently, and meaningfully participate in their community.
3. Virtual supports are geared towards intentional learning (*e.g.,* career planning, taking a bread making class, skill building) and can also be used towards helping a person do something more independently like remote job coaching.

B.   **Virtual Supports Requirements**

1. Direct support can be provided via virtual supports, provided however that the virtual supports meet all of the following requirements.
   a. The virtual supports ensure the participant's rights of privacy, dignity and respect, and freedom from coercion and restraint.
   b. The virtual supports do not isolate the participant from the community or interacting with people without disabilities.
   c. The participant has other opportunities for integration in the community via the other Waiver program services the participant receives and are provided in community settings.
   d. The use of virtual supports to provide direct support has been agreed to by the participant and their team and is outlined in the Person-Centered Plan:
      1) Participants must have an informed choice between in-person and virtual supports;
      2) Virtual supports cannot be the only service delivery provision for a participant seeking the given service;
      3) Participants must affirmatively choose virtual service provision over in-person supports; and
      4) DDA Providers shall include in their Provider Implementation Plan, which shall be uploaded to the LTSS*Maryland* PCP Documentation section.
   e. Virtual supports cannot be used for the DDA Provider's convenience. The virtual supports must be used to support a participant to reach identified outcomes in the participant's Person-Centered Plan.

f. The use of virtual supports must be documented appropriately, just like any in-person direct supports, and identify the service delivery method (*e.g.*, Skype, Zoom, Facetime, telephonic, or direct care), name of staff person providing service, and start and end times.

g. The virtual supports must be delivered using a live, real-time audio-visual connection that allows the staff member to both see and hear the participant. Text messaging and emailing do not constitute virtual supports and, therefore, will not be considered provision of direct supports under this Waiver program service.

h. The virtual supports must comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, and their applicable regulations to protect the privacy and security of the participant's protected health information.

i. The Waiver program service (for which virtual supports is used) may not be provided entirely via virtual supports. Virtual supports may supplement in-person direct supports.

j. Virtual supports, including use of phones, cannot be used to assess a participant for a medical emergency. The DDA Provider must develop and maintain written policies to address processes for preventing and responding to a medical emergency during use of virtual supports, train direct support staff on those policies, and advise participants and their person-centered planning team regarding those policies. At a minimum, such policies must address:

    1) Identifying whether the participant's needs, including health and safety, can be addressed safely via virtual supports;

    2) Identifying individuals to intervene (such as uncompensated caregivers present in the participant's home) and ensuring they are present during provision of virtual supports in case the participant experiences an emergency during provision of virtual supports; and

    3) Processes for requesting such intervention if the participant experiences an emergency during provision of virtual supports, including contacting 911 if necessary.

k. The virtual supports must comply with all federal and State requirements, policies, guidance, and regulations.

l. In addition, the DDA Provider must develop, maintain, and enforce written policies, approved by the DDA, which address:
1) How the provider will ensure the participant's rights of privacy, dignity and respect, and freedom from coercion and restraint;
2) How the provider will ensure the virtual supports used meets applicable information security standards; and
3) How the provider will ensure its provision of virtual supports complies with applicable laws governing individuals' right to privacy.

2. Provider Program Service Plan
a. Virtual support options can be provided under a variety of DDA Medicaid Waiver program services as noted in the chart above.
b. A DDA provider may choose to provide virtual supports for some or all applicable services for which they are approved.
c. DDA Providers interested in furnishing service via virtual supports must include virtual supports as a service delivery method in their provider Program Service Plan (required by COMAR 10.22.02.09) for each service as per their proposed business model.
1) For each service, DDA Providers shall specifically note the service delivery methods (*i.e.,* direct in-person and virtual supports) as applicable, and include the scope and methodology in using these delivery methods.
2) Current DDA Providers must submit an amendment to their current Program Service Plan to the DDA Regional Office Provider Relations liaison and receive approval prior to implementing virtual supports outside of the current Appendix K authority.
3) DDA Providers shall update their Program Service Plan for the applicable services they propose to include a virtual support service delivery model option:
a) As part of their annual re-licensure/re-certification application; and
b) Prior to the end of the Appendix K authority.

     d. The DDA Waiver programs will not fund any costs associated with the DDA Provider obtaining, installing, implementing, or using virtual supports. These costs, in the delivery of new business models, are part of the DDA Provider's operating cost. Examples of costs that will not be funded by the DDA Waiver programs are:

          1) Equipment;

          2) Internet;

          3) Software applications; and

          4) Other related expenses such as additional staff and training.

C.   **Quality Assurance**

1. Participants and their teams shall assess the quality and effectiveness of virtual supports to meet the participant's assessed needs and preferences in accordance with applicable DDA Waiver program requirements, set forth in the DDA Waiver program applications and reiterated in this guidance.
2. The CCS shall assess and document the quality and effectiveness of virtual supports during the quarterly monitoring assessment and more frequently as noted in the PCP. If there is a desire by the participant to change the way services are delivered, a revised PCP and PIP will be required.
3. Health and safety concerns shall be reported to the DDA Regional Office Quality Enhancement Staff.

D.   **Service Limitation, Utilization and Audit**
1. The combination of virtual supports and direct supports for a given DDA Waiver program service cannot exceed services authorized by the DDA within the PCP.
2. Virtual supports cannot be provided for two services at the same time (*e.g.*, Personal Supports and Day Habilitation).
3. The State has mechanisms in place to prevent duplicate billing home and community-based services including:
    a. Service utilization reviews; and
    b. Audits.

Applicable Resources:

[Community Pathways Waiver](#)

[Community Supports Waiver](#)

[Family Supports Waiver](#)