

## **Update on Medicaid Waivers for Individuals with Disabilities**

### **Background on Settlement Agreement**

- In 2008, the U.S. Department of Justice (DOJ) Civil Rights Division began investigating the Central Virginia Training Center (CVTC), which led to a broader examination of the Commonwealth's system of care for individuals with disabilities.
- In February 2011, DOJ concluded its investigation of CVTC and the Commonwealth's compliance with the Americans with Disabilities Act (ADA) and the U.S. Supreme Court Olmstead ruling; the Olmstead decision requires that individuals with disabilities be served in the most integrated settings appropriate to meet their needs and consistent with their choice.
  - DOJ found that the state was unnecessarily institutionalizing persons with disabilities, in violation of the ADA, due to its lack of sufficient community-based services and a flawed discharge process. DOJ pointed to an inadequate number of Medicaid waiver slots and an inflexible waiver structure as key elements in the state's poor community-based care system, as well as a lack of crisis intervention and stabilization services.
  - As a result, DOJ recommended that the state redirect its investment in services for persons with intellectual disabilities away from institutions, instead placing a priority on community-based services. DOJ also advised then-Governor McDonnell that the U.S. Attorney General could initiate a lawsuit to enforce compliance if Virginia failed to comply voluntarily.
- In response, the 2011 General Assembly (GA) passed legislation (**HB 2533** (Cox) and **SB 1486** (Northam)), which was requested by Governor McDonnell, to require that the Behavioral Health and Developmental Services Trust Fund be used for behavioral health and developmental services, and to facilitate the transition of individuals from state training centers to community-based services.
- In January 2012, the Commonwealth and DOJ reached a Settlement Agreement, which resolves DOJ's investigation of Virginia's training centers and community programs, and the Commonwealth's compliance with the ADA and Olmstead with respect to individuals with intellectual and developmental disabilities. After receiving public comment and conducting a public hearing, the court formally approved a modified version of the agreement and entered it as a court order dated August 23, 2012.
- The court appointed an Independent Reviewer to monitor the Commonwealth's compliance with the Settlement Agreement, providing updates to the court twice per year – the next report is scheduled to be released in December 2016.

### **Waiver Terms in the Department of Justice Settlement Agreement (DOJSA)**

- Among other key provisions, the DOJSA includes a minimum number of waiver slots – 4,170 – that the Commonwealth will provide by 2021. These waiver slots are for individuals with intellectual disabilities (ID)/developmental disabilities (DD) who reside in a training center, nursing home, or intermediate care facility, or individuals who meet the criteria for the waitlist for the ID or DD waiver.
- The DOJSA sets forth the number of waiver slots to be created each fiscal year, from 2012 to 2021.
- At the time the DOJSA was established, the demand for waiver services was greater than the required number of waiver slots (see chart on reverse).
- It is important to note that the number of waiver slots included in the DOJSA was determined in 2012, when the statewide waiver waiting list was 8,158; that list has grown to over 10,000 individuals statewide, including approximately 2,000 individuals from Fairfax County.
- Fairfax-Falls Church CSB staff have been told by DBHDS that the DOJSA does not require the Commonwealth to eliminate the waiting list by 2020, and in fact, the number of new slots required by the DOJSA will only cover slightly more than half the waitlist as it existed in 2012; County staff are in the process of preparing more detailed information for the Board about the requirements of the DOJSA, as there has been frequent confusion over its requirements.

- At the time of the DOJSA, Virginia had different Medicaid waivers for persons with intellectual disabilities (ID) and developmental disabilities (DD), and maintained two distinct waiting lists. That difference is illustrated in the chart below.

<b>Minimum Number of Waiver Slots Per DOJSA Terms</b>	<b>Status of Waiver Waitlists at the start of the DOJSA</b>	<b>Status of Waiver Waitlists</b>
<b>805</b> for individuals coming from all training centers (TC)	<b>969</b> individuals in all 5 TC	<b>345</b> individuals in 3 TC that remain open, as of September 9, 2016
<b>2,915</b> waiver slots for individuals with ID on the <b>urgent waitlist</b> , or to transition to the community individuals with ID under 22 years of age from institutions other than the TC (i.e., ICFs and nursing facilities)	<b>6,116</b> individuals on ID waitlist (includes <b>3,466</b> on <b>urgent waitlist</b> ) → <b>756</b> of these individuals were from the Fairfax-Falls Church CSB (including <b>431</b> on the urgent waitlist)	<b>8,058</b> individuals on statewide ID waitlist, as of June 8, 2015
<b>450</b> waiver slots for individuals on the <b>DD waitlist</b> , or to transition to the community individuals with ID under 22 years of age from institutions other than the TC (i.e., ICFs and nursing facilities)	<b>1,073</b> individuals on statewide DD waitlist. <i>Note: The DD list was chronological, so there was no “urgent” category.</i>	<b>1,963</b> individuals on statewide DD waitlist, as of June 8, 2015

### **New Waivers and Next Steps**

- Beginning September 1, 2016, the Community Living, Family and Individual Supports, and Building Independence waivers replaced the previous ID, DD, and Day Support waivers.
- The previously separate ID and DD waiting lists were combined into a single, consolidated waiting list based on urgency. Today, there are three priority levels based upon anticipated urgency of need.
- Under the new waiver system, the demand for waiver slots continues to exceed the number available; although the state has created new waiver slots since 2012, the waitlist has continued to grow.
- The Commonwealth will still need a clear plan with sufficient funding to address this critical issue.