

Montana Department of Public Health and Human Services Developmental Disabilities Program (DDP) Responses to Public Comments on the Proposed 0208 Comprehensive Waiver for Individuals with Intellectual/Developmental Disabilities Waiver Renewal

March 10, 2023

Reserved Capacity/Waitlist

Comment: Thank you for asking for more emergency waiver slots.

Comment: How many people are on the waitlist for the waiver? I mean like 20 a year is laughable and a joke honestly, so I'd like to know how many people are on the actual waitlist for the waiver and what the time frame is. Are these people that have been on the waitlist since like 2016? So, is there a way that you can publish all of that?

Comment: Thanks for having this meeting, and going over the changes, it is really helpful. Do you happen to know what the approximate length of the waitlist is? (We have been on since Feb 2018.)

Comment: My son has been on the waitlist since July 2015.

Comment: There needs to be a better coordination of services available to our kids and a playbook for families to navigate all things available. We have been waiting 6 and 8 years on the waitlist.

Response: The Department acknowledges the comments and questions. Ten individuals are selected from the 0208 waiting list every month, plus reserved capacity as needed.

According to the Waiting List Report on December 1, 2022, there were a total of 2394 individuals waiting for 0208 comprehensive waiver services. Of that total, 1552 children on the waiting list were considered provisionally eligible, or at-risk, based on a condition or assessments that show the child will likely meet the DDP eligibility criteria by the age of 8.

The time frame on the waiting list varies depending on several factors. One such factor is how many of the 1552 provisionally eligible youth meet DD eligibility criteria to remain on the waiting list and to be selected for waiver services. The Department encourages families/individuals to contact their case manager/service coordinator or the [DDP regional office](#) to verify placement and status on the waiting list, as well as discuss other resources and services available in the community.

Behavioral Support Services

Comment: It is great to see that a registered behavior technician (RBT) has been added to Behavioral Support Services (BSS) as another level of service. My public comment and recommendation is that the Department consider adding RBT to level I and not just to level II. RBT is a great and affordable way to support all people who require BSS. My interpretation of level II funding is the person must exhibit challenging behavioral issues that put them at imminent risk of placement in a more restrictive residential or institutional setting.

Response: The Department acknowledges the commentor's recommendation to add direct treatment to level I BSS. At this time, direct treatment will remain a component of level II BSS.

Comment: There should be an incentive for these professionals who are being trained to provide behavior support services to be more familiar and have more expertise in treating mental health disorders. Many of our consumers have developmental disabilities and mental health issues. Medicaid will pay for Applied Behavior Analysis services for people with mental health disorders, but there's such an extreme shortage of people who have that particular expertise.

Response: The Department appreciates the commentor's recommendation. The qualifications for Intensive Behavior Assistant include Intellectual Disability and Mental Illness Dual Diagnosis Direct Service Professional Certification from the National Association of Dual Diagnosis. Additionally, the Department issues training grants to qualified providers who can choose to invest those grant dollars in Dual Diagnosis training opportunities for their staff.

Comment: I wish the state would consider that Board Certified Behavior Analysts be the first line of defense that people with the highest level of qualification in our state and there are places where there are growing numbers of Board Certified Behavior Analysts, they're almost all in Western Montana, or Southern Montana. Very, very few, I think there's one in Eastern Montana and I don't think there's any on our reservations. So, I'd like to have something considered where the first person that is asked to provide the service is a Board Certified Behavior Analyst. If there are no Board Certified Behavior Analysts available or in the community to serve an individual and that there be kind of a second tier where people with different qualifications, less rigorous than the training of a Board Certified Behavior Analyst or Psychologist. For example, people who have IABA training could be sort of the second line of defense. And, if you can't find a BCBA to support your child or your adult child and that there's other levels of qualifications that would satisfy the requirement, but that the first line of defense is Board Certified Behavior Analyst. Same with our Registered Behavior Technicians. We have growing numbers of Registered Behavior Technicians in the state. They can only work under the direction of a Board Certified Behavior Analyst. And, I would say that very, very few if any of them, have mental health expertise. The Registered Behavior Technician training right now is very specific to autism and very specific to children with autism. And, there's just not a good avenue for training people in the field to support people with perhaps dual diagnosis or only mental health issues.

Response: The Department acknowledges the commentor's recommendation and has removed the following qualification from level II BSS, "degree in Applied Behavior Analysis (ABA), Psychology, or Special Education who has provided documentation of training and experience in the use of principles of ABA as approved by the Department." The above noted qualifications will continue to be able to deliver level I BSS services when authorized by the Department.

Comment: First, I would like to thank you guys for working so diligently on these amendments, I know they can't be an easy task. I am a BCBA and have a couple of comments and concerns reading through some of the proposed changes from the memo that was sent out on the 18th from Carla. I just have a couple questions and concerns about some of the criteria that are being used

for who is eligible to actually perform some of these services related to the behavior support services. Particularly, just ensuring that highly qualified, licensed and board certified individuals are the ones that are providing it. It's nothing against any of the other people listed on this particular thing, but I do believe there is enough of us now that are qualified underneath that level to remove some of those additional pieces. The other part I was hoping for clarity on with the responses coming in March, it says they are adding rate study language for the behavior service rates. I am wondering if those are based on the current Medicaid fee structure for applied behavior analysis or if that's actually coming out of the Guidehouse appendices for Board Certified Behavior Analysts as it pertains to 0208. Thank you very much for your time. I do appreciate all the hard work you guys do.

Response: The Department acknowledges the comment. The rates for BSS are a result of analysis and recommendation from Guidehouse pertaining to the 0208 Waiver.

Comment: Happy to see addition of more behavioral services, but concerned whether people will be able to find BCBA-supervised technicians to serve their child. We're seeing families funded for care and services, but unable to find someone to provide those services. Is it possible to build in incentive for people to get the training to be a technician (or BCBA), or assistance with cost to get that training?

Response: The Department acknowledges the commentor's concern. The Department chose to include two different qualification types for the direct treatment component of level II BSS in part to address this concern. The Department issues training grants to qualified providers who can choose to use those grant dollars to support technician or BCBA training.

The Department received several comments from Board Certified Behavior Analysts (BCBA) and/or clinics providing Applied Behavioral Analysis (ABA) services pertaining to concerns with allowing individuals who are not licensed through the Board of Psychology to deliver Behavioral Support Services (BSS). These commentors expressed concerns that the service may not be as highly governed and their desire to ensure ethical integrity amongst its' practitioners. These commentors also recommended ensuring that direct treatment and the work done by Board Certified Assistant Behavior Analysts is supervised by a BCBA or BCBA-D. Additionally, commentors requested removal of IABA certification and the Intensive Behavior Assistant (IBA) qualifications in lieu of Registered Behavior Technician (RBT) instead of in addition to. The commentors also requested that the Department define intermediate professional.

Response: The Department acknowledges the commentors' concerns and recommendations. The Department agrees that the licensing and certification standards for BCBA's and RBT's are rigorous and nationally recognized. Although the number of licensed BCBA's and RBT's have grown, there continue to be significant shortages of these clinicians across the state and the demand outweighs the current workforce's ability to provide these services. The Department reviewed similar services in other states and consulted with several qualified providers when developing the qualifications, training standards and qualifications for level II BSS IBA. Due to concerns with accessibility, many other states also allow individuals who are not Board Certified to provide BSS. It should also be noted that this service is behavioral support services and not applied behavior analysis services. The credentials for level I BSS have been in place over ten

years and there are many individuals currently receiving BSS who could potentially lose access to the service if the Department made all the suggested changes to the qualifications of who can provide BSS.

After consideration of the comments received, the Department has removed the following qualification from level II BSS, “degree in Applied Behavior Analysis, Psychology, or Special Education who has provided documentation of training and experience in the use of principles of ABA as approved by the Department.” The Department has also specified that any direct treatment must be supervised by a BCBA-D, or BCBA or Board Certified Assistant Behavior Analyst (under the supervision of a BCBA or BCBA-D) licensed by the Board of Psychology.

Individuals with a degree in ABA, Psychology, or Special Education who has provided documentation of training and experience in the use of principles of ABA as approved by the Department will continue to be able to deliver level I BSS services as removing this qualification could negatively impact individuals currently receiving this service.

The Department does define intermediate professional in the provider specification for services, other standards section. The definition is as follows:

A graduate student who has completed basic coursework requirements for Behavior Analyst Certification Board® (BACB®) certification and is in the process of completing the experience portion of the eligibility requirements as delineated in the Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers Second Edition issued by the BACB and/or the Council of Autism Service Providers.

Legally Responsible Persons as Paid Caregivers

Comment: With regards to the Covid relief or recovery or whatever you want to call it. During that time, I found out very late and it sounds as though it's still going on that we get help as caregivers to help care for our child. Like there was nothing like my son got for school. He was home. You know, all those types of things. But when I had called and asked if he would qualify, he was ten at the time. And they were basing it off of how old he is and what he would normally do at home, they would basically say like a 12-year-old would do dishes and those types of things. But because he was ten, he didn't qualify, which made no sense. And they apologized all those things. So when I came in on this call, I heard you say that, we could get paid as caregivers, as parents. So right now, I'm the employer and acumen pays what very little respite we get because we have to find our own person. So I guess I'm confused on all of it. Supposedly, they're also working on a bill that would pay caregivers because it's my understanding in the state of Montana, it isn't until 18. So, can you clarify a little bit of that because my son is complete needs. He can't do anything for himself. He doesn't walk, talk. He's tube fed, all these things. And so I'm just kind of confused on how and what's happening for kiddos like him. We do have the waiver, but I find it can be very difficult to navigate. Our case manager is amazing, but even with the recovery part they didn't even know about it. The regional office, sometimes I feel like they don't even know. And, so it just makes it very difficult to get straight answers.

Response: The Department acknowledges the commentor's concerns. There are multiple programs in the state contemplating the flexibilities from the public health emergency, including the allowance of legally responsible persons to be paid caregivers. The Department encourages individuals/families to continue to contact their case manager/service coordinator or the [DDP regional office](#) in their area to be placed on DDP's interested parties email list in order to receive notices. Additionally, individuals/families can obtain information from the [Messenger](#), which is a quarterly newsletter for Medicaid member education.

Comment: I see where the waiver would like to continue to allow for parents, guardians, etc. to provide services to their children that is above and beyond what the parent would normally need to do.

1. Who decides that level of care?
2. Will parents of ADULT children be able to provide these services?
3. Can siblings or other relatives living in the same home provide services still?

Comment: Thank you for considering parents and guardians working as care givers in the renewal. Can parents work as caregivers if the waiver is self-directed?

Comment: Thank you for welcoming stakeholder feedback on the upcoming 0208 waiver renewal. I am a parent of a child receiving the waiver and also a special education teacher. In particular, I want to express my support for continuing compensation for guardians and relatives serving as caregivers. Families such as mine are providing countless care hours beyond the scope of traditional parenting responsibilities. Please extend compensation options to families self-directing waivers as well.

Response: The Department acknowledges and appreciates the comments and questions. The following waiver services currently allow a relative and/or legal guardian as paid caregivers: Residential Habilitation, Companion Services, Personal Care, Personal Supports, and the following Supported Employment services: Follow Along Support, Co-Worker Support, Individual Employment Support, and Small Group Employment Support. Current procedures and specifications remain unchanged. Thus, parents of adult children, siblings, and other relatives can be paid to provide services. Siblings and relatives must be at least 17 years of age to provide services. For self-directed Respite services with common law authority, the sibling must be at least 16 years of age, but must be at least 18 years of age if the services are medical in nature. During the public health emergency, the Department requested and the Centers for Medicare and Medicaid Services (CMS) approved adding the allowance of a "legally responsible person", a parent to a minor child or a spouse to an adult, to be paid caregivers. This flexibility will be expiring and the Department is proposing to add it to the above waiver services as an ongoing option.

The DDP regional staff and person's planning team determines level of care based on assessment information. CMS requires specifications and safeguards be met for extraordinary care needs to allow legally responsible person to be paid caregivers.

A legally responsible person, parent to a minor or spouse to an adult, can be considered to be a paid caregiver for self-directed services. It should be noted; however, that the parent or spouse cannot be both the employer/personal representative and employee of the self-directed services.

Meals

Comment: Thank you for the opportunity to submit public comments concerning the Comprehensive Waiver renewal. I am writing on behalf of PurFoods, LLC d/b/a Mom's Meals ("Mom's Meals") who is a home-delivered meal provider operating nationwide.

Mom's Meals encourages the Department to expressly include cold and frozen meals in the definition of meals to clarify their general permissibility as "other appropriate meals". These additional meal types allow members to choose meal providers that best fit their individual needs and preferences. Frozen and cold meal providers such as Mom's Meals offer diabetes friendly, heart friendly, gluten free, pureed, and other medically tailored menus in addition to their general wellness menus. These meal types allow members to choose meals that align with their health conditions. Recent research by JAMA outlined that implementing medically tailored meal programs across the country could help prevent 1.6 million hospitalizations and save insurers a net amount of \$13.6 billion per year after paying for the cost of food and visit with RD.¹ These studies indicated the use of medically tailored meals can reduce annual healthcare expenditures by 19.7% and unnecessary hospitalizations by 47%.¹

"This service provides hot, *cold, frozen*, or other appropriate meals once or twice a day. . ."

Thank you again for the opportunity to submit comments.

Response: The Department acknowledges and appreciates the recommendation. The Department will add this language to the Meals definition in the Waiver renewal.

Waiver Services

Comment: A comment I would like to submit would be a lot of families have not been able to use services as they would have liked because they can't find people to provide those services, so I would like to just submit that comment as it's being discussed later.

Comment: I just wanted to back up the person that just spoke. I don't know if strength in numbers has any impact, but I definitely have also had that barrier where I've been on wait lists and wait lists and wait lists and then there's just not enough people to provide the services that are needed because of the amount of the wait list and obviously the insurance issues. Some people just literally do not take Medicaid or like in my case healthy kids Montana, so can you just add that as another comment? Like I said, I don't know if strength in numbers makes a difference, but I definitely want to support her in that because I feel that.

Comment: My husband died.. my son is having extreme problems and cannot find help.. which leaves me. Since I am self-direct, I can't be a caregiver since I don't have someone else to be PR

and I don't want to give up guardianship. Something needs to be done to help these single parents

Comment: Nursing is impossible to get in our state as well as respite and it falls all on the parent with no reprieve.

Response: *The Department acknowledges the commentors' concerns. Montana has experienced workforce shortages in the healthcare sector, which was exacerbated by the public health emergency. During the Public Health Emergency, the Department implemented a supplemental payment program to DD waiver providers, including self-direct employers. The supplemental payment program was intended to provide additional funds to support recruitment and retention efforts. Additionally, a provider rate study was conducted and the Department is working with the legislature on implementing recommendations that resulted from the study. The Department supports the recruitment of waiver providers, staff, and retention of both. Additionally, individuals/families are encouraged to contact their case manager/service coordinator or the [DDP regional office](#) to determine other resources for which the individual/family may qualify.*

Utilization Updates

Comment: Is there any way you could clarify what you meant by updates to estimates of use?

Response: *The Department is required to report estimates to CMS on the number of participants and utilization in Appendix J of the waiver. These estimates are generally based on historical utilization. The Department is also required to submit an annual report to CMS and explain any differences between the estimates and actual utilizations.*

Funding

Comment: You said that there's state funds that are funding this. So I'm just curious where that's coming from because as of this year, I think marijuana was made legalized. Is there a way that you guys can get in on some of that money, which in a lot of states is used for health care and education?

Comment: Can the state surplus be used to help fund this program?

Response: *The Department acknowledges the comments. Appropriations of the state budget and surplus is outside the scope of the role of the Developmental Disabilities Program.*

Retainer Payments

Comment: I'm happy to see the expansion of retainer payments. Agencies providing care are struggling and some are closing or in danger of closing. This seems a responsive change that should help.

Comment: I am glad to see the addition of retainer payments for more types of providers.

Response: The Department acknowledges and appreciates the comments.

General Comments and Questions

Comment: Please keep doing the public meetings like this it is helpful and can help keep us informed.

Comment: I appreciate your efforts to include stakeholders in the change process. Thank you!

Comment: Thank you for the work to keep the waiver services up to date to meet community needs!

Comment: Thank you for taking the time to present this important information.

Comment: Thank you for the opportunity to review the Waiver renewal. I definitely approve of the renewal application.

Comment: Can you please let us know how to submit comments after this call and what is the time window for comments?

Comment: Will this power point and the recording be available for us after the Webinar? If it is available to us can you send it to me at [email address]?

Comment: Many families are asking for the recording.

Comment: Where will we be able to find any revisions to the draft and the comments and responses?

Response: The Department acknowledges and appreciates the comments and questions. During the public meeting on January 31, 2023, comments were welcomed, either orally or in the chat. Additional information on how to submit comments after the call were in the PowerPoint, announced during the call, and entered into the chat at the beginning and end of the meeting with the time window to submit comments from January 18th through February 17th. The Department will post the public meeting PowerPoint, any revisions to the draft Waiver Renewal, and the comments and responses on the [DDP Medicaid Waivers website](#). A notice will be emailed to interested parties when it is all posted and available on the website. The recording will not be posted on the website as all the comments and questions, whether orally spoken or written in the chat during the public meeting, have been captured in the comments and responses with the removal of personal identifying information.

Unrelated to Waiver Renewal

Comment: When you say Board Certified, now it is my understanding that some of these waivers, my son is autistic and you guys have now changed it to be that a neuropsychologist has to actually diagnose him, which would be the third person diagnosing him. He was diagnosed by a social worker who did the ADOS test and a child psychologist. But he is now no longer able to get ABA paid for because he didn't get his diagnosis through a neuropsychologist, which is apparently a new thing through Medicare. And so I did call. It takes about 8 months to get off the waiting list just to possibly see a neuropsychologist. Also I just want to make it clear that this is Montana, so there's only a handful of neuropsychologists in the entire state. So, can you clarify what Board Certified is as far as your behavioral diagnosis?

Response: The Department acknowledges the comment and question; however, this is a separate program not included in the waiver renewal. The Department provided contact information during the public meeting and can provide additional follow-up as needed.