



## Vermont Developmental Disabilities Council

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Testimony before the House Committee on Human Services

January 30, 2025

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Thank you for the opportunity to speak with you today about rates for Home and Community Based Services (HCBS) in the Developmental Disabilities Services System.

For the record, my name is Kirsten Murphy, and I am the Executive Director of the Vermont Developmental Disabilities Council. I also serve as the Co-Chair of our State's Medicaid and Exchange Advisory Council and our State's Health Equity Advisory Commission. At the national level, I am the President of the Board of Directors for the National Association of Councils on Developmental Disabilities (NACDD), a role that gives me a unique window on federal policies related to Medicaid and the delivery of HCBS.

### Background

There is a developmental disabilities council in every state and territory, 56 in total. We were created over 50 years ago by what have become known as the Developmental Disabilities Assistance and Bill of Rights Act (the "DD Act," 2000). Congress recognized that if key pieces of disability related legislation – for example, the Americans with Disabilities Act (ADA), certain titles within Social Security, the Older Americans Act – were to take root at the state level, certain entities would need to be in place to advocate for the implementation of those laws. The DD Act put in place three entities in every state: A center at a state university that uses research and teaching to advance community inclusion for people with disabilities, a legal branch that uses the courts to enforce federal disability laws and regulations, and a DD Council. The Council is a public board with 60% of the members being people with lived experience. They are either people with a developmental disability or a family caregiver. Councils were created to ensure that people with lived experience have a strong voice in developing the programs and services that address their needs. I report to Vermont's Council, and they drive our policy agenda.

Vermont's DD Council is funded entirely by Congress. We receive no state dollars. However, our money flows through the Agency of Human Services. I am therefore a state employee. I have a memorandum of understanding with the AHS Secretary that permits me and other representatives of the Council to speak before legislative committees without going through the typical channels. When I do so, I am speaking on behalf of our Council, not the Agency of Human Services.

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## What do service participants want?

The DD Council starts any policy discussion with this question: What do service participants want? Our Council members – not Council staff – set our policy agenda. Each December the DD Council votes to adopt a legislative platform. The adoption of regular rate review for Developmental Disability Services (DDS) is at the top of this year's platform.

When it comes to how agencies are paid for DDS, what do participants want?

1. They want to understand how their individual budget is being used. They want information that tracks how many hours of service they were found to need and how many of those hours have been used. They want transparency at this granular level.
2. They want the hours they have been assessed to need to be filled. If, let's call him John, has been found to need 40 hours a month of Community Support, John and his family have a reasonable expectation that close to 40 hours will, in fact, be provided. For a number of reasons, that is not happening, but this should remain the goal. Service participants are not assessed casually. Vermont now uses a well-regarded standardized instrument called the Support Intensity Scale – along with supplemental tools -- to determine what an individual with an intellectual or developmental disabilities needs to be both safe and to live a life with the same sorts of rights and choices and activities as someone who does not have I/DD. If John has been found to need 40 hours a month, he really needs 40 hours a month.
3. They want to know that the person who comes to provide support is qualified and will deliver services that meet safety and quality standards.

To summarize, payment reform should move us toward transparency, a greater ability to meet a participant's assessed needs, and improved quality assurance.

## Payment reform and cost-based rates

I believe that the need for regular rate review is best understood in the broader context of payment reform in DDS.

In 2014, State Auditor Doug Hoffer delivered a performance audit on the designated agency system. The findings said that "oversight mechanisms generally did not include a systematic comparison of budgeted to actual services for inclusive rate programs, which is a funding mechanism in which a single payment covers an approved range of services. Without such comparisons, DAHL and DMH cannot ensure that clients are receiving the planned services and that the payments being made reflect the services being performed and are not too much or too little."<sup>1</sup> In other words, agencies could not accurately demonstrate that when they received a prospective payment from the state for a bundle of services, the dollars in that payment intended to cover a specific beneficiary for a specific service were in fact used to deliver that service.

In Developmental Services, it is very unusual to deliver 100% of the services an individual participant has been assessed to need (unless we are talking about residential services). Some hours go unfilled

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<sup>1</sup> Report of the State Auditor, "Designated Agencies" (Oct. 14, 2014), cover letter by Doug Hoffer. See: <https://auditor.vermont.gov/reports/performance-audits> .

because of vacations, illness, and staff turnover. This is expected. As the Developmental Disabilities Service System evolved, the flexibility to use these unused dollars became an important mechanism to address short term emergencies and to cover activities that might not otherwise be covered. There was no ill intent involved; this was a creative way for agencies to fulfill their mission in an ever-changing service mix. However, going forward, it was recommended that going forward, DDSD engage in payment reform activities that could demonstrate that when the state paid for, say, 40 hours of Community Support for John, that 40 hours were, in fact, delivered.

The auditor's recommendation was not the only impetus for payment reform. Changes in federal rules were also in play. It's helpful to understand that Hoffer's recommendation was a tall order. Ten years ago, the DDS system did not even have the data collection mechanism to track this level of detail. But the State has worked steadily, albeit slowly, toward payment reform.

Where has there been progress?

First, DDS has moved toward cost-based accounting in the development of its rates. Beginning before the pandemic, Vermont worked with a national firm to cost out what each unit of service delivered by a Designated or Specialized Service Agency (DA/SSA) cost. This first attempt was met with a lot of skepticism by our agency system. Agencies questioned whether the right wage data was referenced, whether assumptions about the time needed for training and supervision were accurate, and many other details. Then the pandemic interrupted this conversation.

Despite the controversy, the DD Council maintained that moving us to cost-based, data drive rates was crucial to putting DDS on a more sustainable trajectory. As Chair Wood described during testimony yesterday, up until now, rates reflect what advocates convince the legislature to adopt. This is not how other human services system or healthcare systems operate. Rates should not depend upon what the market will bear, what can be agreed to in contract negotiations between AHS and the agencies, and what can be topped off when advocates come to the legislature to make the moral case for an increase. We should not be coming to your committee year after year just for a cost-of-living increase, just to keep our system current with inflation.

When the State revisited its rate study, which it has done in the past 18 months, it did a more thoughtful job in accounting for all the direct and indirect costs that an agency incurs when it delivers a unit of service. If this committee would like more details, I encourage you to invite Jessica Bernard to share the careful work that has been done to develop credible and sustainable rates. These are currently being shared with many advisory committees in anticipation of a change over to this new rate structure on Oct. 1, 2025.

This brings us to why H. 13 is timely this legislative session. With data and care behind our baseline rates, DDS is in a strong position to subject those rates to annual review.

That said, I want to encourage this committee to take testimony from people in a better position than I am to talk about the details of these rates. Directors from DA/SSAs can speak to whether the rates are where they need to be. I can only say that I believe we are moving in the right direction.

The second area of progress centers on how the State will start paying the DA/SSAs beginning October 1, 2025. This closes the loop in this narrative that began with the state auditor's recommendation that Vermont be able to demonstrate that dollars paid out are spent for the services they were intended to

cover. The State is proposing to pay each agency up front for a bundle of services based on the new rates. At the end of a specific period – let's say a year – there will be a reconciliation process, where agency encounter data will be used to figure out if the prospective payment was too high or too low. To go back to our service participant, John, the data will tell us if John received 30 or his 40 hours. If that is the case, the agency must pay back the state for the ten unfilled hours.

Recall that no agency delivers 100% of assessed hours. Thanks to improvements in data collection, the State is able to use historical records to estimate a reasonable utilization rate for each agency. The State does not want to be in a position where either party – state or agency – owes the other a large sum. For this reason, the state will use the agencies utilization rate to calculate the size of its prospective payment. In other words, if Agency X typically delivers 75% of the total hours that its service participants have been collectively assessed to need, then the State will pay 75% of the total bundle in monthly installments.

What's important to notice here, is that this builds in a financial incentive for agencies to fill hours. For every hour filled, the agency also receives funding to cover its indirect costs. They incur many of those costs regardless of whether hours are filled, so it is in their interest to deliver as many hours as they can. Please understand that I am not saying that agencies aren't trying hard enough to fill hours. Our DA/SSAs are mission driven and strive to support people to the fullest because it is the right thing to do. However, that does not discount the fact that if we want certain outcomes – and recall that people want their hours filled – then we should align payment with that goal.

Again, Agency Directors will be able to comment on fine details here. The timeline is very aggressive for the roll out of the new payment structure and that may not be appropriate.

One final element needs to be in place – excellent quality assurance. No agency should fill hours with unqualified providers. That would be unsafe and unsound. On Tuesday, you heard about some of the work DDS is doing to adopt a continuous quality assurance strategy. The federal Medicaid authority has also added some quality metrics to Vermont's reporting requirement, though in my opinion these set the bar very low for DDS.

The DD Council believes that two additional data sets are needed to understand the quality of DDS.

First, we hope Vermont will return to the robust measure set that Vermont has used in the past, specifically the National Core Indicators. These are standard measures used across many states that are based on the direct report of people receiving services. They ask questions across many key service areas including employment, rights, service planning, community inclusion, choice, and health and safety. The questions reflect assumptions consistent with the values of Vermont's system – that people be supported to live meaningful lives of their own choosing in community settings where they feel at home.

Second, transparency around the utilization rate for filling service hours is also a key quality metric. Our system can provide the best, most creative support services, but if you are only delivering a fraction of the hours someone has been assessed to need, then you are not serving them well. The ability to calculate these rates can, over time, help us identify patterns – for example, are we better able as a system to fill hours for people with higher or lower support needs? Are the regional differences in the ability to fill hours? Are there certain types of services that are consistently harder to fill?

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To summary, H. 13 should be understood as an important part of the broader effort to bring the DDS system to a more data-driven and sustainable place. It moves us in the direction of what service participants and their families want to see: Transparency around individual budgets and utilization rates by agency; and alignment with the important goal of filling the hours that people have been assessed to need. Work will need to continue to strengthen the quality assurance piece that provides not only checks and balances, but data to drive continuous improvement.

Thank you for the opportunity to share this information with you.