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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-230
VAC Chapter title(s)	Operation of the Individual and Family Support Program
Action title	Amendments to establish criteria and annual funding priorities through the Annual Funding Program Guidelines and to ensure public input.
Date this document prepared	July 22, 2022 (updated)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Behavioral Health and Developmental Services (DBDHS) was directed by the 2022 General Assembly within [Item 313.NN](#) of the 2022 *Appropriation Act* (Chapter 2, 2022 Special Session 1 Acts of Assembly) to utilize emergency authority to promulgate regulations that change the current distribution of annual Individual and Family Support Program (IFSP) funds from a 'first-come-first-served' basis to one based on program categories and set criteria. Specifically, DBDHS is authorized to create an annual public input process that shall include a survey of needs and satisfaction in order to establish plans for the disbursement of IFSP funding in consultation with the IFSP State Council. Based on the Council's recommendation and information gathered during the public input period, the department will draft program guidelines to establish annual funding priorities. The department will establish program

criteria for each of the required program categories and publish them as part of annual IFSP guidelines developed collaboratively by the department and the department’s IFSP State Council. Additionally, program guidelines shall establish eligibility criteria, the award process, appeals processes, and any other protocols necessary for ensuring the effective use of state funds. All criteria will be published prior to opening the funding opportunity. The goal of this regulatory action is to facilitate compliance with the U. S. Department of Justice’s Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG) (<https://dbhds.virginia.gov/doj-settlement-agreement/>).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

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- Council – IFSP State Council.
 - DBHDS – Department of Behavioral Health and Developmental Services.
 - DD – Developmental disabilities.
 - IFSP – Individual and Family Support Program.
 - Settlement Agreement – the U. S. Department of Justice’s Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG).

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

This action is brought in compliance with Code of Virginia § 2.2- 4011.B. in accordance the mandate from the 2022 General Assembly within [Item 313.NN.](#) of the 2022 *Appropriation Act* (Chapter 2, 2022 Special Session 1 Acts of Assembly).

The purpose of this regulation is to facilitate compliance with the U.S. Department of Justice’s Settlement Agreement with Virginia for the development of a comprehensive and coordinated set of strategies that are designed to ensure that families who are assisting family members with [“developmental disabilities” (“DD”)] or individuals with [DD] who live independently have access to person-centered and family-centered resources, supports, services and other assistance. (See [Section II.D.](#)) The program is intended to support the continued residence of any individual with DD on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in his own or the family home, which includes the home of the principal caregiver.

The court appointed Independent Reviewer has stated that while the Commonwealth continues to make progress, it is not fully meeting requirements related to individual and family supports. (See his [18th Report to the Court, p.55.](#)) These amendments provide updated formal ‘documentation of authority and functioning’ for the IFSP program through the use of the annual Guidelines document.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The 2022 General Assembly, within [Item 313.NN](#), of the 2022 *Appropriation Act* (Chapter 2, 2022 Special Session 1 Acts of Assembly), mandated the department to utilize emergency authority to promulgate regulations. Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the commissioner and the department. At its meeting on July 13, 2022, the State Board voted to initiate this emergency action and notice of intended regulation for permanent adoption.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

These amendments are essential to protect the health, safety, and welfare of individuals with DD who are on the waiting list for a Medicaid Waiver HCBS DD Waiver and who reside in their own or their family homes, which include the home of the principal caregiver. The change from the current distribution of annual funds from a 'first-come-first-served' basis will be to one based on program categories and set criteria that will be more needs-based and that has significant stakeholder input. The program guidelines shall establish eligibility criteria, the award process, appeals processes, and any other protocols necessary for ensuring the effective use of state funds. The goal of this regulatory action is to facilitate compliance with the U. S. Department of Justice's Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG) and any amendments must remain in alignment as the action moves through the regulatory adoption process.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

IFSP program overview and purpose

The Individual and Family Support Program (IFSP) assists individuals on Virginia's Medicaid Home and Community-Based Services (HCBS) DD Waivers Waiting List and their families with accessing short term, person- and family- centered resources, supports, and services. The purpose of the program is to support individuals with DD in living in their own home or family home in the community.

IFSP consists of four components: 1) a funding program, 2) community coordination program, 3) information and referral, and 4) connections to family and peer mentoring supports.

IFSP-Funding Program Background

Since 2013, DBHDS's IFSP Program, through the use of state funds allocated by the Virginia General Assembly, has provided direct financial assistance to Virginians on the Medicaid HCBS DD Waivers waitlist. The assistance supports individuals and their families with the purchase of services or items described in the application and approved by the department. The funding program is restricted to assisting individuals on the DD waiver waiting list who are living in their own home or in their family home per 12VAC35-230-20.

Prioritization of Individuals Seeking Assistance Initial Stakeholder Input

Traditionally, the IFSP both assessed applications and provided assistance to individuals solely on a first-come first-served basis. Per the terms of the Settlement Agreement, DBHDS is required to target assistance to people who are at highest risk of being institutionalized. Therefore, beginning in 2019, the IFSP began engaging with the IFSP State Council, the department's formally identified advisory group on family supports, to establish a list of priorities for the funding program. A key take away from engaging with the state and regional councils is the guiding principle that priority categories should consider both the individual circumstances of the applicant and their family and the type of request.

Review of Existing Measures of Risk and Past IFSP Data

In order to create a framework for identifying and supporting those most at risk of institutionalization, the IFSP established the program's funding categories through discussion with subject matter experts and a review of internally used intake and assessment tools across DBHDS divisions. IFSP also reviewed past IFSP funding outcome data including requested need categories to understand what needs are typically requested and how changes to the program may impact assistance for those needs.

Regulatory Changes

Amendments to this chapter eliminate unnecessary language related to the 'first-come-first-served' funding award process used to date. It makes clear the use of a formal Guidelines document for the details of the criteria for annual awards and that the document must be reviewed and updated annually, sets out that the IFSP State Council will work in consultation with DBHDS to develop the Guidelines, that additional stakeholder comment must be sought, and makes clear the following expectations for DBHDS in regard to community coordination:

1. Engage with the public and stakeholders to establish programming that encourages the continued residence of individuals with DD in community settings.
2. Establish the IFSP State Council.
3. Coordinate the development of strategic plans and activities that are consistent with the IFSP goals through the work of the Council.
4. Provide technical assistance to individuals or family members for the purpose of facilitating the purchase services that are intended to enhance or improve an individual's or family's quality of life and promote the independence and continued residence of an individual with DD in his own home or the family home, which include the home of a principal caregiver.

Additionally, amendments make clear the department's responsibility regarding the establishment of procedures for eligibility determination, the award process, appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures shall be published annually in the Individual and Family Support Program Guidelines prior to opening the funding opportunity each year.

For each funding period, the department shall develop and publish the following information on the IFSP:

1. Applicant eligibility criteria;
2. A summary of allowable expenditures;
3. Maximum award amount per applicant;
4. Application deadlines;
5. Award notification schedules;
6. Award review criteria; and
7. Requirements for expenditure substantiation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1) The primary advantage to the public is that those most in need of assistance will be considered based on defined categories of need. Also, the public will have the opportunity to comment annually on draft revisions of the Guidelines document. The primary disadvantage to the public of implementing the amended provisions is that individuals on the waiting list for the Medicaid Home and Community-Based Services (HCBS) DD Waivers and their families will have to learn the new procedures for application for funding. Those who previously benefited from the ‘first-come-first-served’ basis potentially may be categorized differently with the new structure. Additionally, a redesigned application portal will be available to the public that is intended to be more user-friendly.

2) The primary advantage to DBHDS and the Commonwealth is the assurance that the funds are distributed in a targeted manner. Also, these changes more thoroughly comply with the requirements of the Settlement Agreement. Though some resources are being used to redesign the portal, there are no disadvantages to the agency or the Commonwealth.

3) A pertinent matter of interest to the regulated community, government officials, and the public is that there will be an annual Guidelines document circulated for public comment and finalized before any funds are distributed each year. There are no disadvantages to the public or the Commonwealth as these changes will ensure more public input and more targeted use of state funds.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

In response to the requirements of the Settlement Agreement, the Department of Behavioral Health and Developmental Services (DBDHS) was directed by the 2022 General Assembly within [Item 313.NN](#) of the 2022 Appropriation Act (Chapter 2, 2022 Special Session 1 Acts of Assembly) to utilize emergency authority to promulgate regulations. Therefore, there is no alternative to this mandate.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

DBHDS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email, or fax to Heather Hines, DBHDS IFSP Manager, Division of Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, ifspsupport@dbhds.virginia.gov, and fax 804-692-0077. If emailed, it would be helpful if the subject line could state 'Comments on IFSP Emergency Action.' In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10			New definitions are added for clarity: <ul style="list-style-type: none"> ▪ “Custodial family member” is added to make clear which family member

		<p>"Developmental disability" or "DD" means a severe, chronic disability of an individual that:</p> <ol style="list-style-type: none"> 1. Is attributable to a mental or physical impairment or combination of mental and physical impairments; 2. Is manifested before the individual attains age 22; 3. Is likely to continue indefinitely; 4. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-sufficiency; and 5. Reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. (42 USC § 15002) <p>"Family member" means an immediate family member of an individual receiving</p>	<p>is appropriate to apply, or assist an individual in applying, for funds.</p> <p><u>"Custodial family member" means a family member who has primary authority to make all major decisions affecting the individual and with whom the individual primarily resides.</u></p> <ul style="list-style-type: none"> ▪ "Developmental disability" was updated in the Code of Virginia in 2015 (37.2-100). <p><u>"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual, without services and supports, has a high probability of meeting those criteria later in life.</u></p>
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		<p>services or the principal caregiver of that individual. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the individual receiving services. (§ 37.2-100 of the Code of Virginia)</p> <p>"Individual and Family Support" means an array of individualized items and services that are intended to support the continued residence of an individual with intellectual or developmental disabilities (ID/DD) in his own or the family home.</p> <p>"Intellectual disability" or "ID" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage</p>	<p>(No change; showing for context with added term above, "custodial family member.")</p> <ul style="list-style-type: none"> This definition incorporates and expands on the IFS definition using language from the Settlement Agreement: <p><u>"Individual and Family Support Program" or "IFSP" or "Program" means an array of individualized person-centered and family-centered resources, supports, items, services, and other assistance approved by the department that are intended to support the continued residence of an individual with developmental disabilities (DD) who is on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in his own or the family home, which includes the home of the principal caregiver.</u></p> <ul style="list-style-type: none"> This definition is added to reflect current practice and to be in line with the Settlement Agreement: <p><u>"Individual and Family Support Program State Council" or "IFSP State Council" or "Council" means an advisory group of stakeholders selected by the department that shall provide consultation to the department on creating a family support program intended to increase the resources for individuals and families and promote community engagement and coordination. The Council shall include individuals with DD and family members of individuals with DD.</u></p>
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		<p>intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (§ 37.2-100 of the Code of Virginia)</p>	<ul style="list-style-type: none"> ▪ One definition is removed because it is not used in the regulation; the definition of 'developmental disability' was updated in the Code of Virginia in 2015 (37.2-100) (ID is a type of DD); and related, three of the existing home and community-based waivers were <u>redesigned in 2021</u> combining the target populations of individuals with intellectual disabilities and other developmental disabilities. The phrase 'a Medicaid Home and Community-Based Services (HCBS) DD Waiver' is used to capture the correct waivers regardless of the specific title. <p>"Intellectual disability" or "ID" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (§ 37.2-100 of the Code of Virginia)</p>
20		<p>A. The Individual and Family Support Program assists individuals with intellectual disability or developmental disabilities and their family members to access needed person-centered and family-centered resources, supports, services and other assistance as approved by the department. As such, Individual and Family Support Program funds shall be distributed directly to the requesting individual or family member or a third party designated by the individual or family member.</p> <p>B. The overall objective of the Individual and Family Support Program is to support the continued residence of an individual</p>	<ul style="list-style-type: none"> ▪ References to intellectual disability are removed, language is streamlined and clarified to be in line with the Settlement Agreement, and the roles the Council and the guidelines are inserted: <p>A. The Individual and Family Support Program assists individuals with intellectual disability or developmental disabilities and their family members to access needed person-centered and family-centered resources, supports, services, and other assistance as approved by the department. As such, Individual and Family Support Program funds shall be distributed directly to the requesting individual or family member or a third party designated by the individual or family member. <u>The overall objective purpose of the Individual and Family Support Program-IFSP is to support the continued residence of an individual with intellectual or developmental disabilities</u></p>

		<p>with intellectual or developmental disabilities in his own home or the family home, which include the home of a principal caregiver.</p> <p>C. Individual and Family Support Program funds shall not supplant or in any way limit the availability of services provided through a Medicaid Home and Community-Based Waiver, Early and Periodic Screening, Diagnosis and Treatment, or similar programs.</p>	<p><u>in his own home or the family home, which includes the home of a principal caregiver.</u></p> <p>B. The overall objective of the Individual and Family Support Program is to support the continued residence of an individual with intellectual or developmental disabilities in his own home or the family home, which include the home of a principal caregiver. The <u>department shall operate the IFSP directly or through a third party designated by the department to administer all or part of the Program, based on guidelines developed collaboratively by the department and the department's IFSP State Council.</u></p> <p>C. Individual and Family Support Program <u>IFSP funds shall be distributed directly to the requesting individual or custodial family member or a third party designated by the individual or custodial family member. IFSP funds shall not supplant or in any way limit the availability of services provided through a Medicaid Home and Community-Based HCBS DD Waiver_; Early and Periodic Screening, Diagnosis, and Treatment_; or similar programs.</u></p>
30		<p>(Repealed; replaced with Section 35.) Program eligibility requirements Eligibility for Individual and Family Support Program funds shall be limited to individuals who are living in their own or a family home and are on the statewide waiting list for the Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Support (IFDDS) Medicaid Waiver and family members who are assisting those individuals.</p>	
31 (new)			<ul style="list-style-type: none"> ▪ These new changes clarify the overall structure for the work of the department: <p><u>Community coordination.</u> <u>The department shall:</u></p>

			<p><u>1. Ensure an annual public input process that encourages the continued residence of individuals on the waiting list for a Medicaid HCBS DD Waiver in community settings.</u></p> <p><u>2. Establish the IFSP State Council.</u></p> <p><u>3. Develop, in coordination with the Council, a strategic plan that is consistent with these regulations and the purpose of the IFSP and that is updated as necessary as determined by the department.</u></p> <ul style="list-style-type: none"> ▪ <u>4. Provide technical assistance to individuals or family members to facilitate their access to covered services and supports listed in 12VAC35-230-55, that are intended to enhance or improve their quality of life and promote the independence and continued residence of an individual with DD in his own home or the family home, which includes the home of a principal caregiver.</u>
35 (new)		(Previously Section 30.)	<ul style="list-style-type: none"> ▪ Replaces Section 30. Language moved from 30 now 35 A; new clarifying language regarding public input and the generic reference to Waivers (see above); puts the regulation in line with the Settlement Agreement; the roles of the Council and the annual guidelines are inserted. (Note in the project, all language shows as entirely new due to formatting requirements; existing language is shown in this table.) <p><u>Program eligibility requirements and policies.</u></p> <p><u>A. Eligibility for Individual and Family Support Program IFSP funds shall be limited to individuals who are living in their own or a family home and are on the statewide waiting list for the a Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Support (IFDDS) Medicaid HCBS DD Waiver and their custodial family members who are assisting those individuals.</u></p> <p><u>B. The department, based on information gathered through public input and in collaboration with the IFSP State Council</u></p>

			<p><u>shall establish eligibility criteria as published in the Individual and Family Support Program Guidelines (“Guidelines”), the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures shall be published annually in the Guidelines prior to opening the funding opportunity.</u></p> <p><u>C. For each funding period, the department shall develop and publish the following information on the IFSP:</u></p> <p><u>1. Criteria for prioritized funding categories;</u></p> <p><u>2. A summary of allowable expenditures;</u></p> <p><u>3. Application deadlines; and</u></p> <p><u>4. Award notification schedules.</u></p> <p><u>D. The Guidelines shall be reviewed and updated annually.</u></p>
40		<p>(Repealed; replaced with Section 45.)</p> <p>Program implementation.</p> <p>A. Individual and Family Support Program funds shall be limited by the amount of funds allocated to the program by the General Assembly. Department approval of funding requests shall not exceed the funding available for the fiscal year.</p> <p>B. Based on funding availability, the department shall establish an annual individual financial support limit, which is the maximum annual amount of funding that can be provided to support an eligible individual during the applicable fiscal year.</p> <p>C. Individual and Family Support Program funds may be provided to individuals or family members in varying amounts, as requested and approved by the department, up to the established annual</p>	

		<p>individual financial support limit.</p> <p>D. On an annual basis, the department shall announce Individual and Family Support Program total funding availability and the annual individual financial support limit for the applicable fiscal year. This announcement shall include a summary of covered services, the application, and the application review criteria.</p> <p>E. Individuals and family members may submit applications for Individual and Family Support Program funding as needs arise throughout the year. Applications shall be considered by the department on a first come, first served basis until the annual allocation appropriated to the program by the General Assembly for the applicable fiscal year has been expended.</p> <p>F. Individuals and their family members may apply for Individual and Family Support Program funding each year and may submit more than one application in a single year; however, the total amount approved during the year shall not exceed the annual individual financial support limit.</p>	
45 (new)		(Previously Section 40.)	<ul style="list-style-type: none"> ▪ Replaces from Section 40. Changes emphasize the public input process, remove the funding limit and 'first come first served' structure, insert the focus on prioritized funding categories as established in the annual guidelines, and move any other information in deleted text to be addressed elsewhere in the revised regulation or shall be addressed in the guidelines. (Note in the project,

			<p>all language shows as entirely new due to formatting requirements; existing language is shown in this table.)</p> <p>A. Individual and Family Support Program IFSP funds shall be limited by the amount of funds allocated to the Program by the General Assembly. <u>The Department approval of funding requests shall not exceed the funding available for the fiscal year. Based on information gathered through relevant data and public input, and in collaboration with the IFSP State Council, the department shall establish annual funding categories.</u></p> <p>B. Based on funding availability, the department shall establish an annual individual financial support limit, which is the maximum annual amount of funding that can be provided to support an eligible individual during the applicable fiscal year.</p> <p>C. Individual and Family Support Program IFSP funds may be provided to individuals or <u>custodial</u> family members in varying amounts, as requested and <u>approved</u> determined by the department's <u>prioritized funding categories, up to the established annual individual financial support limit.</u></p> <p>D. On an annual basis, the department shall announce Individual and Family Support Program total funding availability and the annual individual financial support limit for the applicable fiscal year. This announcement shall include a summary of covered services, the application, and the application review criteria.</p> <p>E. Individuals and family members may submit applications for Individual and Family Support Program funding as needs arise throughout the year. Applications shall be considered by the department on a first come, first served basis until the annual allocation appropriated to the program by the General Assembly for the applicable fiscal year has been expended.</p>
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			<p>F. Individuals and their family members may apply for Individual and Family Support Program funding each year and may submit more than one application in a single year; however, the total amount approved during the year shall not exceed the annual individual financial support limit.</p>
<p>50</p>		<p>(Repealed; replaced with Section 55.)</p> <p>Covered services and supports.</p> <p>Services and items funded through the Individual and Family Support Program are intended to support the continued residence of an individual in his own or the family home and may include:</p> <ol style="list-style-type: none"> 1. Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management; 2. Assistive technology and home modifications, goods, or products that directly support the individual; 3. Temporary rental assistance or deposits; 4. Fees for summer camp and other recreation services; 5. Temporary assistance with utilities or deposits; 6. Dental or medical expenses of the individual; 7. Family education, information, and training; 8. Peer mentoring and family-to-family supports; 9. Emergency assistance and crisis support; or 	

		<p>10. Other direct support services as approved by the department.</p>	
<p>55 (new)</p>		<p>(Previously Section 50.)</p>	<ul style="list-style-type: none"> ▪ Replaces Section 50; removes language and instead focuses on the three categories of covered services and points to the guidelines for any list of fundable services and items. <p>Services and items funded through the Individual and Family Support Program <u>IFSP as published in the Guidelines</u> are intended to support the continued residence of an individual in his own or the family home and may include: (i) <u>safe community living</u>; (ii) <u>improved health outcomes</u>; and (iii) <u>community integration</u>:</p> <ol style="list-style-type: none"> 1. Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management; 2. Assistive technology and home modifications, goods, or products that directly support the individual; 3. Temporary rental assistance or deposits; 4. Fees for summer camp and other recreation services; 5. Temporary assistance with utilities or deposits; 6. Dental or medical expenses of the individual; 7. Family education, information, and training; 8. Peer mentoring and family-to-family supports; 9. Emergency assistance and crisis support; or 10. Other direct support services as approved by the department. <u>No services or items shall be funded by the Program if not listed in the Guidelines or if covered by another entity.</u>

<p>60</p>		<p>(Repealed; replaced with Section 65.)</p> <p>Application for funding.</p> <p>A. Eligible individuals or family members who choose to apply for Individual and Family Support Program funds shall submit a completed application to the department.</p> <p>B. Completed applications shall include the following information:</p> <ol style="list-style-type: none"> 1. A detailed description of the services or items for which funding is requested; 2. Documentation that the requested services or items are needed to support the continued residence of the individual with ID/DD in his own or the family home and no other public funding sources are available; 3. The requested funding amount and frequency of payment; and 4. A statement in which the individual or family member: <ol style="list-style-type: none"> a. Agrees to provide the department with documentation to establish that the requested funds were used to purchase only approved services or items; and b. Acknowledges that failure to provide documentation that the requested funds were used to purchase only approved services or items may result in recovery of such funds and denial of subsequent funding requests. <p>C. The application shall be signed by the individual or</p>	
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		<p>family member requesting the funding.</p>	
<p>65 (new)</p>		<p>(Previously Section 60.)</p>	<ul style="list-style-type: none"> ▪ Replaces Section 60; removes the requirement to submit receipts but requires that any such documentation be available on request; changes the information about need to an attestation rather than more formal documentation (the only requirement is if the individual is on the waiting list); adds “custodial” where appropriate before “family member.” (Note in the project, all language shows as entirely new due to formatting requirements; existing language is shown in this table.) <p>A. Eligible individuals or <u>custodial</u> family members who choose to apply for <u>Individual and Family Support Program IFSP</u> funds shall submit a completed application to the department.</p> <p>B. Completed applications shall include the following information:</p> <ol style="list-style-type: none"> 1. A detailed description of the services or items for which funding is requested; 2. Documentation <u>Acknowledgement</u> that the requested services or items are needed to support the continued residence of the individual with HD/DD in his own or the family home and no other public funding sources are available; 3. The requested funding amount and frequency of payment; and 4. A statement in which the individual or <u>custodial</u> family member: <ol style="list-style-type: none"> a. Agrees to provide <u>to the department, if requested, with</u> documentation to establish that the requested funds were used to purchase only approved services or items <u>described in the application and approved by the department</u>; and b. Acknowledges that failure to provide documentation, <u>when requested</u>, that the requested funds <u>applied for</u> were used to purchase only approved services or items <u>described in the application and approved by the department</u> may result

			<p>in recovery of such funds and denial of subsequent funding requests.</p> <p>C. The application shall be signed by the individual or <u>custodial</u> family member requesting the funding.</p>
70		<p>(Repealed; replace with Section 75.)</p> <p>Application review criteria. Upon receipt of a completed application, the department shall:</p> <ol style="list-style-type: none"> 1. Verify that the individual is on the statewide ID or IFDDS Medicaid Waiver waiting list; 2. Confirm that the services or items for which funding is requested are eligible for funding in accordance with <u>12VAC35-230-50</u>; 3. Determine that the services or items for which funding is requested are needed to support the continued residence of the individual with ID/DD in his own or the family home; 4. Determine that other public funding sources have been fully explored and utilized and are not available to purchase or provide the requested services or items; 5. Evaluate the cost of the requested services or items; and 6. Consider past performance of the individual and family members regarding compliance with this chapter. 	
75 (new)		(Previously Section 70.)	<ul style="list-style-type: none"> ▪ Replaces Section 70; removes unnecessary language regarding the application process and review as such detail will be included in the guidelines document, and updated for the new process; requires the department to produce two reports,

			<p>one of basic data and information post-funding season, and one on a summary of accomplishments towards meeting stated goals. (Note in the project, all language shows as entirely new due to formatting requirements; existing language is shown in this table.)</p> <p><u>Application Review Criteria Reporting.</u> Upon receipt of a completed application, the department shall:</p> <ol style="list-style-type: none"> 1. Verify that the individual is on the statewide ID or IFDDS Medicaid Waiver waiting list; 2. Confirm that the services or items for which funding is requested are eligible for funding in accordance with 12VAC35-230-50; 3. Determine that the services or items for which funding is requested are needed to support the continued residence of the individual with ID/DD in his own or the family home; 4. Determine that other public funding sources have been fully explored and utilized and are not available to purchase or provide the requested services or items; 5. Evaluate the cost of the requested services or items; and 6. Consider past performance of the individual and family members regarding compliance with this chapter. <p><u>A. For each funding period, the department shall develop and publish a summary that details the total dollar amount of funded awards, a summary of expenditure requests, the number of applications received, and the number of applications and individuals approved for receipt of IFSP funds.</u></p> <p><u>B. The department, with input from the IFSP State Council, shall develop an annual summary of accomplishments towards meeting the goals of the Virginia State Plan to Increase Individual and Family Supports.</u></p>
80		(Repealed; replaced with Section 85.)	

		<p>Funding decision-making process.</p> <p>A. Applications may be approved at a reduced amount when the amount requested exceeds a reasonable amount as determined by department staff as being necessary to purchase the services or items.</p> <p>B. Applications shall be denied if the department determines that:</p> <ol style="list-style-type: none">1. The service or item for which funding is requested is not eligible for funding in accordance with <u>12VAC35-230-50</u>;2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year;3. Other viable public funding sources have not been fully explored or utilized;4. The requesting individual or family member has not used previously received Individual and Family Support Program funds in accordance with the department's written notice approving the request or has failed to comply with these regulations; or5. The total annual Individual and Family Support Program funding appropriated by the General Assembly has been expended for the applicable fiscal year. <p>C. The department shall provide a written notice to the individual or family member who submitted the application indicating the funding decision.</p>	
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85 (new)		(Previously Section 80.)	<ul style="list-style-type: none"> ▪ Replaces Section 80; streamlined language. (Note in the project, all language shows as entirely new due to formatting requirements; existing language is shown in this table.) <p>A. Applications may be approved at a reduced amount when the amount requested exceeds a reasonable amount as determined by department staff as being necessary to purchase the services or items.</p> <p>B. Applications shall be denied if the department determines that:</p> <p>1. The the service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-50 65, other public funding sources are available, or the total annual IFSP</p>

			<p><u>funding appropriated by the General Assembly has been expended for the applicable fiscal year;</u></p> <p>2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year;</p> <p>3. Other viable public funding sources have not been fully explored or utilized;</p> <p>4. <u>The B. Additionally, potential grounds for denial shall include if the requesting individual or custodial family member has not used previously received Individual and Family Support Program funds in accordance with the department's written notice approving the request or has failed to comply with these regulations; or.</u></p> <p>5. <u>B. The total annual Individual and Family Support Program IFSP funding appropriated by the General Assembly has been expended for the applicable fiscal year.</u></p> <p>C. The department shall provide a written notice to the individual or <u>custodial</u> family member who submitted the application indicating the funding decision, <u>including the reason for denial of funding, if applicable.</u></p> <p>1. Approval notices shall include:</p> <p>a. The services, supports, or other items for which funding is approved;</p> <p>b. The amount and time frame of the financial allocation;</p> <p>c. The expected date that the funds should be released; and</p> <p>d. Financial expenditure documentation requirements, and the date or dates by which this documentation shall be provided to the department.</p> <p>2. For applications where funding is denied or approved at a reduced amount, the department's notice shall state the reason or reasons why the requested services, supports, or other items were denied or were approved at a reduced amount and the process for</p>
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			requesting the department to reconsider its funding decision.
90			<ul style="list-style-type: none"> ▪ One word addition to specify “custodial” family members as those to be involved with the application process. <p>A. Individuals or <u>custodial</u> family members who disagree with the determination of the department may submit a written request for reconsideration to the commissioner, or his designee, within 30 days of the date of the written notice of denial or approval at a reduced amount.</p>
100		D. Failure to use funds in accordance with the department's written notice or provide documentation that the funds were used to purchase only approved services or items may result in recovery of such by the department.	<ul style="list-style-type: none"> ▪ Amendments point to the guidelines document for specification on how funds may be spent; changes documentation to 'if requested' as in another section; and also, points to the applicant's description of services in order to simplify the review process. <p>D. Failure to use funds in accordance with the department's written notice <u>Guidelines</u> or provide documentation, <u>if requested</u>, that the funds were used to purchase only approved services or items as described in the application and <u>approved by the department</u> may result in recovery of such by the department.</p>
110		Funding through the Individual and Family Support Program shall be terminated when the individual is enrolled in the ID or IFDDS Medicaid Waiver or if approved funds are used for purposes not approved by the department in its written notice. Any funds approved, but not released, will be forfeited in such circumstances.	<ul style="list-style-type: none"> ▪ Clarifying edits. <p>Funding through the Individual and Family Support Program <u>IFSP</u> shall be terminated when the individual is enrolled in the a ID or IFDDS Medicaid <u>HCBS DD Waiver, if the individual is found to be no longer eligible to be on a waiting list for a Medicaid HCBS DD Waiver in accordance with 12VAC30-122-90 and any appeal has been exhausted</u>, or if approved funds are used for purposes not approved by the department in its written notice. Any funds approved, but not released, will be forfeited in such circumstances.</p>