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Proposed Regulation 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 and to ensure public input.
Date this document prepared	July 13, 2023 September 28, 2023 January 3, 2024*

(*Reposted January 19, 2024, as the form template embedded tags seemed corrupted.)

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 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. 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 annual funding priorities and program criteria for each of the required program categories and publish them in draft form for public comment and in final form prior to opening the funding opportunity as part of annual IFSP review process. Additionally, the department, based on information gathered through

public input and in consultation with the IFSP State Council, shall annually establish eligibility criteria, the award process, the appeals process, 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) (<https://dbhds.virginia.gov/doj-settlement-agreement/>). An [emergency regulation](#) became effective on January 19, 2023. This proposed action is the next step to creating permanent amendments to Chapter 230.

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.

- 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

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

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 each individual with DD on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in the individual’s own home 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 funding awards through the use of procedures used by the department for those determinations.

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 and Acts of 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 the emergency action and notice of intended regulation for permanent adoption. An [emergency regulation](#) became effective on January 19, 2023. This proposed action was approved on July 12, 2023.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

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 department, based on information gathered through public input and in consultation with the IFSP State Council, shall annually establish eligibility criteria, the award process, the appeals process, 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 formal procedures for funding awards that detail the criteria for annual awards and that must be reviewed annually, sets out that the IFSP State Council will work in consultation with DBHDS to establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds; 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 each individual's 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 in draft form for public comment and in final form prior to opening the funding opportunity.

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 funding award procedures. 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 funding procedures will be published in draft form for public comment and in final form prior to opening the funding opportunity . 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.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements more restrictive.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies affected.

Localities Particularly Affected

There are no localities particularly affected.

Other Entities Particularly Affected

Any individual with a developmental disability (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, and family members of any such individual.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources. 	<ul style="list-style-type: none"> ▪ The development of a new application process could potentially result in one-time costs for DBHDS staff to develop the new system. However, ongoing efforts by the Division of Developmental Services and IFSP have contributed to greater technological functionality of the waiver system and IFSP system in recent years. These IFSP portal and WaMs system have been connected to facilitate automation across the system that, overall, has contributed to reduced manual work by staff during the application process. As such, there has been no additional staff cost related to the development and establishment of a criteria-based system for awarding IFSP funds. ▪ The functionality of the IFSP system is expected to benefit as a result of this change. Under the first come, first served system individuals would rush to submit their application as soon as the system open, which lead to two major crashes of the IFSP portal. As there is no longer an individual benefit to submitting an application first, DBHDS expects to see an alleviation of IT system pressures.
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no other costs to any other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>For the Commonwealth, as the total amount of funding provided through the IFSP program remains unchanged, these costs and benefits are expected to balance out across the system, resulting in a neutral economic impact. The changes are expected to benefit the entire system, as individuals with the greatest need will be prioritized for support. This will result in a more efficient assignment of resources.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	See Table 1a in the EIA.
Benefits the regulatory change is designed to produce.	See Table 1a in the EIA.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	See Table 1a, Table 3, and Table 4 in the EIA.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See Table 1a, Table 3, and Table 4 in the EIA.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	See Table 1a, Table 3, and Table 4 in the EIA.
Benefits the regulatory change is designed to produce.	See Table 1a, Table 3, and Table 4 in the EIA.

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.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

See Table 1c in the EIA. This action was mandated; therefore, there is no alternative.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

There is no alternative to this mandate. See Table 1c and Table 4 in the EIA.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency conducted 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 was 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.

This action is necessary for the protection of public health, safety, and welfare of any individual with DD on the waiting list for a Medicaid Home and Community-Based Services (HCBS) DD Waiver in each individual’s own or the family home, which includes the home of the principal caregiver.

This action has no economic impact on small businesses consistent with the stated objectives of applicable law.

The amended language is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia:

- (1) There is a continued need for the regulation in order to meet the legislative mandate.
- (2) No comments were received concerning the regulation.
- (3) The complexity of the regulation is streamlined and straightforward regarding what the department must do on an annual basis to set criteria for the distribution of funds.
- (4) There is no overlap, duplication, or conflict with federal or state law or regulation.
- (5) The periodic review was postponed intentionally to coincide with this action. The mandate from the General Assembly is the only factor that changed in the area affected by the regulation.

There is no economic impact on small businesses.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No comments were received.

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.

The Department of Behavioral Health and Developmental Services 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, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

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. 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 this 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 the existing VAC Chapter(s) and the proposed regulation. If the 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		<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) 	<p>New definitions are added for clarity:</p> <ul style="list-style-type: none"> ▪ "Custodial family member" is added to make clear which family member is appropriate to apply, or assist an individual in applying, for funds. <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 :</u></p> <ol style="list-style-type: none"> <u>1. Is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness;</u> <u>2. Is manifested before the individual reaches 22 years of age;</u> <u>3. Is likely to continue indefinitely;</u> <u>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, or (vii) economic self-sufficiency; and</u> <u>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</u>

		<p>learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-sufficiency; and</p> <p>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> <p>"Family member" means an immediate family member of an individual receiving 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><u>extended duration and are individually planned and coordinated.</u> <u>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 subdivisions 1 through 5 of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.</u></p> <p>(No change; showing for context with added term above, "custodial family member.")</p> <p><u>"Individual and Family Support Program" or "IFSP" 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 individuals with developmental disabilities who are on the waiting list for a Medicaid Home and Community-Based Services Developmental Disability Waiver ("Medicaid HCBS DD Waiver") in each individual's own home or the family home, which includes the home of the principal caregiver.</u></p> <ul style="list-style-type: none"> ▪ This definition expands on the IFS definition using language from the Settlement Agreement to reflect current practice and to be in line with the Settlement Agreement:
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		<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 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>	<p><u>"Individual and Family Support Program State Council" or "IFSP State 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 and supports for individuals and families and promote community engagement and coordination. The IFSP State Council shall include individuals with DD and family members of individuals with DD.</u></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 redesigned in 2021 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>
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<p>20</p>		<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 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>	<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.</p> <p>B. The overall objective of the Individual and Family Support Program is to support the continued residence an individuals with intellectual or developmental disabilities in his <u>each individual's</u> own home or the family home, which include <u>includes</u> the home of a principal caregiver.</p> <p><u>B. The department shall administer the IFSP funding awards directly or through a third party designated by the department to administer all or part of the IFSP, based on annual funding priorities and program criteria developed by the department in consultation with the department's IFSP State Council.</u></p> <p><u>C. Individual and Family Support Program 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 Waiver, Early and Periodic Screening, Diagnosis and Treatment, or similar programs.</u></p>
<p>30</p>		<p>(Repealed; replaced with Section 35.) Program eligibility requirements</p>	

		<p>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> <ol style="list-style-type: none"> 1. <u>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 and includes a survey of needs and satisfaction.</u> 2. <u>Establish the IFSP State Council.</u> 3. <u>Develop, in coordination with the IFSP State 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> 4. <u>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 the individuals' or family members' quality of life and promote the independence and continued residence of an individual with DD in that individual's 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 review process are inserted. (Note in the project, all language shows as

			<p>entirely new due to formatting requirements; existing language is shown in this table.)</p> <p><u>Program eligibility requirements and policies.</u></p> <p><u>A. Eligibility for IFSP funds shall be limited to individuals who are living in their own home or a family home and are on the statewide waiting list for a 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 consultation with the IFSP State Council, shall annually establish eligibility criteria, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures used by the department for determining funding awards shall be published annually in draft form for public comment and in final form prior to opening the funding opportunity.</u></p> <p><u>C. For each funding period, the department shall base funding awards on the following published information:</u></p> <ol style="list-style-type: none"> <u>1. Criteria for prioritized funding categories;</u> <u>2. A summary of allowable expenditures;</u> <u>3. Application deadlines; and</u> <u>4. Award notification schedules.</u> <p><u>D. All procedures used by the department for funding awards shall be reviewed 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</p>	

		<p>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 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>	
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<p>45 (new)</p>		<p>(Previously Section 40.)</p>	<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 awards procedures, and move any other information in deleted text to be addressed elsewhere in the revised regulation or shall be addressed in the procedures. (Note in the project, all language shows as entirely new due to formatting requirements; existing language is shown in this table.) <p>A. Individual and Family Support Program <u>IFSP</u> funds shall be limited by the amount of funds allocated to the IFSP 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 custodial family members in varying amounts, as requested and approved determined by the department’s annually prioritized funding categories, up to the established annual 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</p>
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			<p>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>
50		<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 10. Other direct support services as approved by the department. 	

<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 annual awards process and procedures for any list of fundable services and items. <p>Services and items funded through the Individual and Family Support Program <u>IFSP as published annually in accordance with this chapter</u>, are intended to support the continued residence of an individual in his <u>that individual's</u> own or the family home and may include be approved in the <u>following three main categories: (i) safe community living, (ii) improved health outcomes, and (iii) 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. No services or items shall be funded by the IFSP if not listed in the departments procedures or if covered by another entity.
<p>60</p>		<p>(Repealed; replaced with Section 65.) Application for funding. A. Eligible individuals or family members who choose to apply for Individual and Family Support Program funds</p>	

		<p>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 family member requesting the funding.</p>	
65 (new)		(Previously Section 60.)	<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)

			<p>requirements; existing language is shown in this table.)</p> <p>A. Eligible individuals or <u>custodial</u> family members who choose to apply for Individual and Family Support Program <u>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>Acknowledgment</u> that the requested services or items are needed to support the continued residence of the individual with ID/DD in his <u>that individual's own home</u> 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</u> the department, if requested, with <u>documentation to establish</u> that the requested funds were used to purchase only <u>approved</u> services or items <u>described in the application and approved by the department</u>; and b. Acknowledges that failure to provide <u>documentation, when requested</u>, that the <u>requested funds applied for</u> were used to purchase only <u>approved</u> services or items <u>described in the application and approved by the department</u> may result in recovery of such funds and denial of subsequent funding requests. <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.</p> <p>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 	

		<p>funding in accordance with 12VAC35-230-50;</p> <p>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;</p> <p>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;</p> <p>5. Evaluate the cost of the requested services or items; and</p> <p>6. Consider past performance of the individual and family members regarding compliance with this chapter.</p>	
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 annual funding process, and updated for the new process; requires the department to produce two reports, 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>Application Review Criteria Reporting. 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

			<p>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> <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> <u>B. The department, with input from the IFSP State Council, shall develop an annual summary of accomplishments toward meeting the goals of the Virginia State Plan to Increase Individual and Family Supports.</u></p>
80		<p>(Repealed; replaced with Section 85.) Funding decision-making process. 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. B. Applications shall be denied if the department determines that: 1. The service or item for which funding is requested is not eligible for funding in accordance with 12VAC35-230-50; 2. The request exceeds the maximum annual individual financial support limit for the applicable fiscal year; 3. Other viable public funding sources have not</p>	

		<p>been fully explored or utilized;</p> <p>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; or</p> <p>5. The total annual Individual and Family Support Program funding appropriated by the General Assembly has been expended for the applicable fiscal year.</p> <p>C. The department shall provide a written notice to the individual or family member who submitted the application indicating the funding decision.</p> <p>1. Approval notices shall include:</p> <ul style="list-style-type: none">a. The services, supports, or other items for which funding is approved;b. The amount and time frame of the financial allocation;c. The expected date that the funds should be released; andd. Financial expenditure documentation requirements, and the date or dates by which this documentation shall be provided to the department. <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 requesting the department to reconsider its 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> <ol style="list-style-type: none"> 1. The <u>the</u> 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 funding appropriated by the General Assembly has been expended for the applicable fiscal year; 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 B. Additionally, applications for IFSP funds may be denied 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, 5. B. The total annual Individual and Family Support Program IFSP 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 custodial family member who submitted the application indicating the funding decision, including the reason for denial of funding, if applicable.</p> <ol style="list-style-type: none"> 1. Approval notices shall include: <ol style="list-style-type: none"> a. The services, supports, or other items for which funding is approved; b. The amount and time frame of the financial allocation; c. The expected date that the funds should be released; and
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			<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 requesting the department to reconsider its funding decision.</p>
90			<ul style="list-style-type: none"> ▪ One word addition to specify "custodial" family members as those to be involved with the application process. Other clarifying use of the term 'commissioner.' <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 <u>the commissioner's</u> designee, within 30 days of the date of the written notice of denial or approval at a reduced amount.</p> <p>B. The commissioner, or his <u>the commissioner's</u> designee, shall provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the funding should be approved as originally requested.</p> <p>C. The commissioner, or his <u>the commissioner's</u> designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all involved parties in writing. The commissioner's decision shall be binding.</p>
100		D. Failure to use funds in accordance with the	<ul style="list-style-type: none"> ▪ Amendments point to the annual funding procedures 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</p>

		<p>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.</p>	<p>IFSP <u>procedures for funding awards</u> or provide documentation, <u>if requested</u>, that the funds were used to purchase only approved <u>services or items as described in the application and approved by the department</u> may result in recovery of such by the department.</p>
110		<p>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.</p>	<p>▪ Clarifying edits. 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 HCBS DD Waiver, <u>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. <u>In such circumstance. Any any funds approved, but not yet released, will be forfeited in such circumstances shall not be disbursed .</u></p>

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Explanation: Information in the regulation was moved in the emergency regulation to a 'guidelines' document and referenced in the amended language for the emergency action. As part of the Code-mandated authority of the office, prior to publication as an emergency regulation, the Virginia Registrar acted to make a technical change of the Guidelines from a guidance document to a document incorporated by reference (DIBR). This requires that the guidelines be filed with the body of the regulation text. However, *because of the requirements for an annual review process, there is no way to annually review, and when needed update, a DIBR through regulatory action in such a tight timeframe.* Nothing about the process as adopted in the emergency regulation would change, but by 'softening' the language to reference the award 'procedures' without naming the guidelines document, the department can meet the annual review requirements. The annual development process and public comment is unchanged; drafts will be posted on the agency website and linked to a General Notice on Town Hall with a public comment forum, and the final version will be published on the website and in a General Notice when ready before the next funding cycle. Once the language was reviewed again for this purpose, other minor nonsubstantive corrections or clarifications were made in the language. See grey shading for changes.

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage
12VAC35-230-10. Definitions.		<p><u>"IFSP Guidelines" means "The Department of Behavioral Health and Developmental Services Individual and Family Support Program Guidelines," DD 07, Version January 9, 2023, as incorporated by reference into this chapter.</u></p> <p><u>"Individual and Family Support Program" or "IFSP" 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 who is on the waiting list for a Medicaid Home and Community-Based Services DD Waiver in the individual's own home or the family home, which includes the home of the principal caregiver.</u></p>	<p>(See explanation above under the title of this table.)</p> <p>"IFSP Guidelines" means "The Department of Behavioral Health and Developmental Services Individual and Family Support Program Guidelines," DD 07, Version January 9, 2023, as incorporated by reference into this chapter.</p> <p><u>"Individual and Family Support Program" or "IFSP" 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 individuals with developmental disabilities who is are on the waiting list for a Medicaid Home and Community-Based Services Developmental Disability Waiver ("Medicaid HCBS DD Waiver") in the each individual's own home or the family home, which includes</u></p>

		<p><u>"Individual and Family Support Program State Council" or "IFSP State 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 IFSP State Council shall include individuals with DD and family members of individuals with DD.</u></p>	<p><u>the home of the principal caregiver.</u></p> <p><u>"Individual and Family Support Program State Council" or "IFSP State 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 and supports for individuals and families and promote community engagement and coordination. The IFSP State Council shall include individuals with DD and family members of individuals with DD.</u></p>
<p>12VAC35-230-20. Program description.</p>		<p>A. 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 <u>that individual's</u> own home or the family home, which include <u>includes</u> the home of a principal caregiver.</p> <p>B. The department shall operate the IFSP directly or through a third party designated by the department to administer all or part of the IFSP, based on guidelines developed collaboratively by the department and the department's IFSP State Council.</p> <p>C. Individual and Family Support Program 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-</p>	<p>A.The overall objective of the Individual and Family Support Program is to support the continued residence of an individuals with intellectual or developmental disabilities in his <u>that each individual's</u> own home or the family home, which include <u>includes</u> the home of a principal caregiver.</p> <p>B. The department shall operate administer the IFSP funding awards directly or through a third party designated by the department to administer all or part of the IFSP, based on <u>guidelines annual funding priorities and program criteria</u> developed collaboratively by the department and in consultation with the department's IFSP State Council.</p> <p>C. Individual and Family Support Program 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</p>

		<p>Based DD Waiver; Early and Periodic Screening, Diagnosis, and Treatment; or similar programs.</p>	<p>Community-Based DD Waiver; Early and Periodic Screening, Diagnosis, and Treatment; or similar programs.</p>
<p>12VAC35-230-31. Community coordination.</p>		<p>The department shall: <u>1. Ensure an annual public input process that encourages the continued residence of individuals on the waiting list for a Medicaid Home and Community-Based DD Waiver in community settings.....</u></p>	<p>The department shall: <u>1. Ensure an annual public input process that encourages the continued residence of individuals on the waiting list for a Medicaid Home and Community-Based HCBS DD Waiver in community settings and includes a survey of needs and satisfaction.....</u></p>
<p>12VAC35-230-35. Program eligibility requirements and policies.</p>		<p>A. Eligibility for IFSP funds shall be limited to individuals who are living in their own home or a family home and are on the statewide waiting list for a Medicaid Home and Community-Based DD Waiver and their custodial family members who are assisting those individuals.</p> <p>B. The department, based on information gathered through public input and in collaboration with the IFSP State Council, shall establish eligibility criteria as published in the IFSP 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 IFSP Guidelines prior to opening the funding opportunity.</p> <p>C. For each funding period, the department shall develop and publish the following information on the IFSP: <u>1. Criteria for prioritized funding categories;</u> <u>2. A summary of allowable expenditures;</u> <u>3. Application deadlines; and</u></p>	<p>A. Eligibility for IFSP funds shall be limited to individuals who are living in their own home or a family home and are on the statewide waiting list for a Medicaid Home and Community-Based HCBS DD Waiver and their custodial family members who are assisting those individuals.</p> <p>B. The department, based on information gathered through public input and in collaboration-consultation with the IFSP State Council, shall annually establish eligibility criteria as published in the IFSP Guidelines, the award process, the appeals process, and any other protocols necessary for ensuring the effective use of state funds. All procedures used by the department for determining funding awards shall be published annually in the IFSP Guidelines draft form for public comment and in final form prior to opening the funding opportunity.</p> <p>C. For each funding period, the department shall develop and publish base funding awards on the following published information on the IFSP: <u>1. Criteria for prioritized funding categories;</u> <u>2. A summary of allowable expenditures;</u></p>

		<p><u>4. Award notification schedules.</u> <u>D. The IFSP Guidelines shall be reviewed and updated annually.</u></p>	<p><u>3. Application deadlines; and</u> <u>4. Award notification schedules.</u> <u>D. The IFSP Guidelines All procedures used by the department for funding awards shall be reviewed and updated annually.</u></p>
12VAC35-230-45. Program implementation.		<p><u>B. IFSP funds may be provided to individuals or custodial family members in varying amounts, as determined by the department's prioritized funding categories.</u></p>	<p><u>B. IFSP funds may be provided to individuals or custodial family members in varying amounts, as determined by the department's annually prioritized funding categories.</u></p>
12VAC35-230-55. Covered services and supports.		<p><u>Services and items funded through the IFSP as published in the IFSP Guidelines are intended to support the continued residence of an individual in that individual's own home or the family home and may include (i) safe community living, (ii) improved health outcomes, and (iii) community integration. No services or items shall be funded by the IFSP if not listed in the IFSP Guidelines or if covered by another entity.</u></p>	<p><u>Services and items funded through the IFSP, as published in the IFSP Guidelines annually in accordance with this chapter, are intended to support the continued residence of an individual in that individual's own home or the family home and may include be approved in the following three main categories (i) safe community living, (ii) improved health outcomes, and (iii) community integration. No services or items shall be funded by the IFSP if not listed in the IFSP Guidelines department's procedures or if covered by another entity.</u></p>
12VAC35-230-85. Funding decision-making process.		<p><u>B. Additionally, potential grounds for denial shall include if the requesting individual or custodial family member has not used previously received IFSP funds in accordance with the department's written notice approving the request or has failed to comply with this chapter.</u></p>	<p><u>B. Additionally, potential grounds for denial shall include applications for IFSP funds may be denied if the requesting individual or custodial family member has not used previously received IFSP funds in accordance with the department's written notice approving the request or has failed to comply with this chapter.</u></p>
12VAC35-230-90. Requests for reconsideration.		<p><u>C. The commissioner, or his the commissioner's designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all</u></p>	<p><u>C. The commissioner, or his the commissioner's designee, after reviewing all submitted materials shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and shall notify all</u></p>

		involved parties in writing. The commissioner's decision shall be binding.	involved parties in writing. The commissioner's decision shall be binding.
12VAC35-230-100. Post-funding review.		D. Failure to use funds in accordance with the department's written notice <u>IFSP Guidelines</u> or provide documentation, <u>if requested</u> , that the funds were used to purchase only approved services or items <u>as described in the application and approved by the department</u> may result in recovery of such by the department.	D. Failure to use funds in accordance with the department's written notice <u>IFSP Guidelines procedures for funding awards</u> or provide documentation, <u>if requested</u> , that the funds were used to purchase only approved services or items <u>as described in the application and approved by the department</u> may result in recovery of such by the department.
12VAC35-230-110. Termination of funding for services, supports, or other assistance.		Funding through the Individual and Family Support Program <u>IFSP</u> shall be terminated when the individual is enrolled in the ID or IFDDS <u>a Medicaid Home and Community-Based (HCBS) DD Waiver</u> , <u>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.	Funding through the Individual and Family Support Program <u>IFSP</u> shall be terminated when the individual is enrolled in the ID or IFDDS <u>a Medicaid Home and Community-Based (HCBS) DD Waiver</u> , <u>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. <u>In such circumstance, Any funds approved, but not yet released, will be forfeited in such circumstances shall not be disbursed.</u>
<u>Documents Incorporated by Reference (12VAC35-230)</u>	(deleted)	<u>Department of Behavioral Health and Developmental Services, Individual and Family Support Program Guidelines, DD 07, Version January 9, 2023</u>	<u>Department of Behavioral Health and Developmental Services, Individual and Family Support Program Guidelines, DD 07, Version January 9, 2023</u>