



## Virginia Network of Private Providers, Inc.

### *Building Meaningful Lives for Extraordinary People*

<http://vnppinc.org>

#### **Comments on the Revised Transition Plan:**

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An association for persons or organizations with an interest in or that provide support for persons who have mental illness, developmental delay or substance use disorder, and who are licensed by or funded by the Department of Behavioral Health and Developmental Services.

A State Association  
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There is an assumption that each of the HCBS Settings requirements must specifically appear within some regulation applicable to the providers of HCBS in the Commonwealth; we dispute that assumption and note that the Provider Agreement required by DMAS for each provider requires that each "comply with all applicable state and federal laws, as well as administrative policies and procedures of VMAP." As we stated in comments to an earlier version of this plan, controlling regulations for providers of HCBS should be DMAS regulations specific to the HCBS services covered by the federal regulation. Coincidentally, as revisions are currently underway for the three ID/D Waivers, there will be Emergency Regulations published this summer. DMAS has existing legislative authority to publish Emergency Regulations.

On page 21 there appears a description of a proposed process for releasing "Emergency: licensing regulations; it is worth noting that the process described for development no longer includes any reference to the stakeholder group which was previously described but never convened by DBHDS. Given the process outlined (and the fact that DBHDS has been in the process of drafting and publishing "emergency" regulations for for several years), we would like it noted that they appear to be attempting to use the "Emergency" regulatory as a artificial way to avoid any review or stakeholder input. We question if an "Emergency" exists which complies with the definition in the Code of Virginia (2.2-4011) and note that the Budget just passed by the General Assembly did not grant authority for Emergency Regulations for this purpose.

In Appendices B5 and B6 we noted errors in the listing of settings presumed to be institutional or that may benefit from targeted remediation; in Appendix B6 we object strongly to the assumption that any site of greater than 8 beds "may need targeted remediation." During the lengthy negotiation process with CMS while the regulation was under development, a large coalition of advocates and providers were able to persuade CMS to remove all references to number of residents as a criteria for compliance from the regulation; this appears to impose a size limit and is, therefore, artificially restrictive.

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