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**State of Vermont  
Agency of Human Services**

280 State Drive  
Waterbury, VT 05671-1000

[www.humanservices.vermont.gov](http://www.humanservices.vermont.gov)

[phone] 802-241-0440

[fax] 802-241-0450

*Jenney Samuelson, Secretary  
Todd Daloz, Deputy Secretary*

**Date:** May 25, 2024

**Re:** Response to Public Comments for Global Commitment Register notice [GCR-24-018 Developmental Disabilities and Brain Injury Programs—Legally Responsible Individuals](#)

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A comment received from a member of the public for the Developmental Disabilities Program proposed policy is included below along with a response from the Agency of Human Services (AHS). No other comments were received.

**Comment:**

I applaud the State for choosing to continue payments to responsible individuals after the expiration of the Global Commitment 1115 Waiver Home and Community Based Service Flexibilities.

That said, GCR 24-018 has many issues as currently proposed by the State, many of which were brought up to the State during the input sessions that the State held, and clearly ignored. To start, in one of these input sessions I proposed that the State shift funding from the budgets of the agencies failing to utilize hours, to go directly to the Legally Responsible Individuals who are now providing that necessary care on a per pay period basis. I was told that this was not feasible because agency budgets were determined and paid out on a yearly basis. With the introduction of GCR 23-148 this should now be feasible on a monthly schedule. The Legally Responsible Individuals can be enrolled in GPP with the monthly prospective payments being set to the historical unutilized portion of the individual's budget. Logically, the historically underperforming agency who is not able to utilize the individual's budget will have their prospective payments set to their own historical performance. The state can then use the FFS portion of GCR 23-148 to reconcile any differences at the end of the fiscal year. This new option gets both the Legally Responsible Individuals and the agencies a monthly cash flow with the ability to be paid fairly for actual care provided.

**State Response:**

The State appreciates the comment submitted and is pleased to have the opportunity to expand paid caregiver support to include Legally Responsible Individuals.

The Developmental Disabilities Program proposed policy allows the state to provide payment to Legally Responsible Adults for the care they deliver to their adult child. This payment will be retrospective and will not be budget based. This is the same as all payments that are made to paid caregivers for care provided in the Department of Disabilities, Aging and Independent Living's Developmental Disabilities Home and Community Based Services.

The payment structure included in the policy allows payment to Legally Responsible Individuals to provide hours of Community Supports or In-Home Support. This is consistent with payments made to

other providers who support the individual. All employees/staff supporting an individual are required to follow Individual Support Agreement goals. Legally Responsible Individuals have the same expectations. They must follow requirements to ensure that services are delivered as authorized and meet program requirements that align with the expectations of all other direct support staff.

**Comment:**

7.200.3(g) is extremely disrespectful towards the Legally Responsible Individuals who are providing necessary care. I would estimate that most of the Legally Responsible Individuals taking care of individuals are doing so because of the failures of the agencies providing direct support and the State's failure to bring these agencies to utilize anywhere near the provisioned hours of care. By capping Legally Responsible Individuals payment to CBA rates the State further reinforces how it has historically regarded Legally Responsible Individuals as lesser than the agencies that have consistently failed to provide the necessary services that these Legally Responsible Individuals are now shouldering: the Legally Responsible Individuals are providing the same service, they should get the same compensation as the agencies would get for providing that service. Capping the compensated number of hours to 40 is unfair to the Legally Responsible Individuals: if the State in its own needs assessment has determined care needs of over 40 hours, it needs to respect its own decision, the needs of the individual being cared for, and the people providing that care, regardless if they are and agency or not. My point is proven further in 7.200.5: the State demands Legally Responsible Individuals to "perform the work that any other direct support staff would be required to do, based on job duties and Individual Support Agreement goals". This disparity in pay between agencies and Legally Responsible Individuals incentivizes the State to continue to ignore the poor performance of the agencies, as it allows them to lower their budget while still claiming to CMS that individuals' care needs are met: this is exploitation of the Legally Responsible Individuals.

**State Response:**

Section 7.200.3(g) aligns the wages paid to Legally Responsible Individuals with the minimum rate set forth in State's Independent Direct Support Worker Collective Bargaining Agreement. A variable wage will not be paid to Legally Responsible Adults. The Collective Bargaining Agreement is re-negotiated on a cycle basis (currently every two years), allowing for a renegotiation of the minimum rate. Agency wages are only available to employees of agencies where the wage is set based on an agency Medicaid rate that includes the necessary overhead for operating an agency.

Federal guidance to states on Medicaid policies for paying Legally Responsible Individuals specifies that a state's policy should include additional safeguards beyond meeting typical requirements of employees and service providers, such as limiting the amount of services that legally responsible individuals may furnish. Vermont's policy establishes this limit at 40 hours per week. Capping the number of hours per week is designed to further the goal of preserving unpaid family time.

**Comment:**

7.200.4(c)'s stipulation of only one paid Legally Responsible Individual per paid arrangement is dangerous and ignores the realities of some individual's care needs. The State is either ignorant of or ignoring the possibility that an individual's care needs can daily surpass the duration that a single Legally Responsible Individual can safely provide. By keeping this stipulation they are forcing a single Legally Responsible Individual to unsafely care for an individual. Agencies are not constrained to a single worker to provide services to an individual per pay period, this stipulation only serves to punish a family or group of people caring for an individual when the agencies charged with the individual's care do not.

**State Response:**

The State appreciates the comments provided related to section 7.200.4(c). The State will review policies across the country to learn how other states have approached this issue and consider any feedback that is received during the rulemaking process to determine if a revision of the policy should be made to include more than one Legally Responsible Individual.

**Comment:**

7.200.5(b) was criticized heavily in the input sessions. Legally Responsible Individuals should not be expected to grant free access to their home to the same groups who are failing to provide care for the individuals who are now housed there. Again, punishing the families and people who are performing the actual care, and setting up a system to harass the Legally Responsible Individuals.

**State Response:**

Section 7.200.5(b) considered feedback provided by stakeholders. Following feedback from the public, the policy now indicates “may include” instead of “shall” to reflect that not all circumstances would necessitate an unannounced home visit. However, the policy does still afford scheduled in-home/in-person team visits. This is intended to ensure appropriate avenues for oversight and support to the people receiving services, as required by federal regulation.

**Comment:**

7.200.5(f) needs to involve the State. The State has been relying on these Legally Responsible Individuals to make up for the State's failings to hold agencies accountable for their poor performance by relying on Legally Responsible Individuals to provide the care deficit, now the State wants to outsource this same responsibility to the Legally Responsible Individuals. The State should be involved in this discussion or provide the Legally Responsible Individuals a way to meaningfully use this new responsibility to force agencies to actually utilize the budgets they were given.

The State has consistently treated any non-agency care provider with disdain, even though these same people are shouldering the burden caused by the State's self admitted "chronic issues related to the limited availability of service providers". The State has and continues to use the emotional exploitation of family and friends to lower its budget while claiming to CMS that its care obligations are met, and continuing to shuffle funding into agencies who for decades have failed to raise their performance to anything resembling acceptable levels.

**State Response:**

In section 7.200.5(f), the periodic review of the arrangement, State staff are not involved in determining the appropriateness of the initial or continued nature of the arrangement; this decision will be made at the individual team level. Section 7.200(f) includes a role for the State staff through the annual agency quality services review process.