

DDDS Legislative Task Force: Approved Recommendations

(as of April 30, 2021)

1. DDDS provide the current data methodology and identifying any data that may have changed to the Substantiated Incidents Subcommittee (approved October 23, 2019)
2. Going forward, when DDDS collects data on substantiated incidents, the data should be stratified by the site/setting of the substantiated incident, the type of service provider, the number of people served at the site, and the number of provider staff present on the shift during the incident. Additionally, the definition of site will be determined by DDDS and the providers at the monthly provider advisory meeting. (approved November 20, 2019 from the Substantiated Incidents Subcommittee)
3. The annual substantiated incidents report outlined in the November 20, 2019 recommendation approved by the DDDS Task Force will be made available for public consumption and posted on the DDDS website. (approved November 20, 2019 from the Substantiated Incidents Subcommittee)
4. Behavioral Support Plans are to be desk reviewed by a member of PROBIS in the 2 weeks prior to a PROBIS meeting and any minor, technical corrections must be submitted back to the provider within 3 working days of the PROBIS meeting with the presumption of acceptance by the PROBIS committee upon corrections which may occur at the PROBIS meeting. (approved November 20, 2019 and immediately sent to DDDS and the Secretary of DHSS in light of the December PROBIS schedule)
5. A report from DDDS on behavioral support plans currently outstanding and the progress towards their approval will be provided at each task force meeting. (approved November 20, 2019 from the Prevailing Service Delivery Issues Subcommittee)
6. A working group, comprised of DDDS and the provider community, will be established to redesign PROBIS and its operations. (approved November 20, 2019 from the Prevailing Service Delivery Issues Subcommittee)
7. It is recommended that DDDS incorporate within their governing documents that they will collaborate with service recipients, providers, and families/guardians in their planning, problem-solving, and communications for new regulations, procedures, and Approaches. (approved December 4, 2019)
8. It is recommended that as DDDS considers new regulations, systems, and project mandates they be required to address the question, "How does the acknowledged under-reimbursement of providers impact their ability to meet this requirement and what is the resulting impact on service recipients and families/guardians? (approved December 4, 2019)
9. DDDS will develop clear and ongoing training for DDDS staff, families, and all service providers including community navigators and service coordinators on ICAP, rate-setting methodology, and Exception process for all DDDS programming. (approved December 4, 2019 from the Prevailing Service Delivery Issues Subcommittee)
10. DDDS will follow the Exception Process as outlined in the Division's guidance and procedures and respond in accordance with established timelines for each step of the Process. (approved December 4, 2019 from the Prevailing Service Delivery Issues Subcommittee)

11. DDDS will develop and adhere to communications standards with the provider community and families. (approved December 4, 2019 from the Prevailing Service Delivery Issues Subcommittee)
12. Increase the base funding for DDDS services in accordance with the 2019 DDDS rate Study. (approved December 4, 2019 from the Prevailing Service Delivery Issues Subcommittee)
13. DDDS will conduct an annual climate survey of employees, which will be evaluated by the leadership team. The Division will develop and implement targeted “SMART” (Specific, Measurable, Achievable, Realistic, and Timely) goals. The annual results will be reported to the DDDS Advisory Council and made publicly available. (approved December 18, 2019 from the Structure/Leadership Subcommittee)
14. DHR will conduct exit interviews of employees who are leaving DDDS, whether they are retiring or leaving to another job inside or outside of state government. Exit interviews provide a wealth of valuable information that can be used to improve operations as well as the work environment. DHR will identify trends and share this information with DDDS annually. The results of the exit interviews will be reported to the DDDS Advisory Council by the Division. DHR may wish to consider utilizing this process with other state departments and divisions. (approved December 18, 2019 from the Structure/Leadership Subcommittee)
15. With active consumer, family, and provider participation, DDDS should establish a standardized, comprehensive Risk/Vulnerability Assessment and Planning Process to be completed during the referral, transition planning, and admission processes and annually thereafter. This process should be completed by each individual’s support team and must proactively and fully identify all substantial risks and vulnerabilities for each individual served. It must also ensure that meaningful, appropriate, and individualized support plans are developed and systematically implemented to address each of these risks, as an essential part of each person’s Person Centered Plan (PCP) to ensure each person’s ongoing health, safety, and welfare. (approved December 18, 2019 from the Prevailing Service Delivery Issues Subcommittee)
16. DDDS should establish a permanent Quality Improvement Advisory Committee to include active, meaningful participation with consumers, advocates, and providers to evaluate and strengthen their support, services, policies, procedures, regulations, and overall service infrastructure. The Admission, Discharge, and Risk Mitigation processes should be among the priorities to be reviewed, analyzed, and developed or revised by this Committee. (approved December 18, 2019 from the Prevailing Service Delivery Issues Subcommittee)
17. The Division Director will promote communication throughout the Division so that all staff is aware of Division priorities, mission, and vision. To improve communication throughout the Division and between the Division and stakeholders, DDDS will standardize an interactive process of information sharing. This may include things such as a quarterly newsletter disseminated to both employees and families with a process for encouraging those receiving this information with an opportunity to respond back to DDDS administration with their thoughts and concerns. (approved February 18, 2020 from the Structure/Leadership Subcommittee)
18. The Division will develop and continually update an easy to understand organizational chart that includes contact information for each service area and Divisional department. This organizational chart will be placed on the DDDS website so that people receiving services or doing business with DDDS can easily reach the appropriate DDDS employees when in need assistance or guidance. (approved February 18, 2020 from the Structure/Leadership Subcommittee)

19. To better ensure a smooth rollout of new DDDS initiatives, DDDS, with active input for all stakeholders, will determine and clearly delineate training requirements prior to the implementation of each initiative. (approved February 18, 2020 from the Structure/Leadership Subcommittee)
20. The State of Delaware must increase funding of the DDDS service system so that the acknowledged underfunding is eliminated. The underfunding is the root cause of the direct service workforce crisis current in the DDDS system, which negatively impacts service recipients and the broader community. (approved February 25, 2020 from the DSP Subcommittee)
21. The state of Delaware must ensure that DDDS fully fund the provider rate at 100% of the benchmark based on the most recent rate rebase study. (approved October 21, 2020 from the DSP Subcommittee)
22. The state of Delaware's DDDS Rate Rebasing Study should be updated every two to three years as recommended by the Burns and Associates, Inc. Independent Study of Rate Methodologies for Services Delivered by the Divisions within the Delaware Department of Health and Social Services, dated May 29, 2020. (approved October 21, 2020 from the DSP Subcommittee)
23. DDDS will identify employee retention issues, identify and address the reasons for turnover, and implement incentives for retaining employees. (approved October 21, 2020 from the Structure/Leadership Subcommittee)
24. DDDS will request information from the DHSS regarding the release of specific information regarding the climate survey data which was used in the development of the Strategic Plan. DDDS will use this data to gain an understanding of underlying issues that impact morale and develop a plan to address those issues. (approved October 21, 2020 from the Structure/Leadership Subcommittee)
25. Each year the DDDS will undertake the process of identifying any major initiatives and system changes planned by DDDS in the upcoming year and over the course of the next several years. The information will be made publicly available in written form and feedback from all stakeholders will be encouraged. (approved October 21, 2020 from the Structure/Leadership Subcommittee)
26. To reduce negative and unintended impacts resulting from the implementation of new initiatives, DDDS will develop a standard written process for the implementation of all major initiatives and policy changes. This process will include notification of stakeholders and solicitation of feedback prior to implementation, consideration of how much time affected parties will need to prepare for the change, and consideration of any financial impact the changes will have on affected stakeholders. (approved November 18, 2020 from the Structure/Leadership Subcommittee)
27. DDDS will ensure that RFPs issued by DDDS are appropriately funded so that successful bidders are able to fulfill the service delivery expectations of the RFP. (approved December 16, 2020 from the Structure/Leadership Subcommittee)
28. DDDS shall make the following changes to section 3.0 of the proposed 2103 "Reportable Incident Management and Corrective Measures" regulations [change is highlighted]:
 - a. "**Adverse Outcome**" means a substantial and undesirable effect resulting from 1) administration of the wrong medication; administration of the wrong dose of a medication; failure to administer medication as prescribed; or 2) failure to deliver **other medical or** non-medical services as indicated in the person-centered-plan. Adverse outcomes may be physical, mental, emotional or behavioral. A licensed and qualified medical provider shall determine if an adverse outcome has

- occurred related to medication and can reasonably be attributed to a medication treatment error. Non-medication related adverse outcomes may be determined by DDDS subject matter experts.
- b. **“Bullying”** means any written, digital, electronic, verbal, or physical action that is intended to elicit fear or cause harm, directly or indirectly through inciting others to act, to **affect** a service recipient’s emotional, psychological, or physical wellbeing. The actions may be taken by staff to service recipient; service recipient to service recipient; or others to service recipient.
 - c. **“Critical Incidents”** means a subset of reportable incidents that has resulted in actual physical, financial, mental or emotional harm **or adverse outcomes**; or presents a significant and immediate threat to the health and safety of a service recipient. This includes, but is not limited to: physical/emotional/sexual abuse; neglect; mistreatment; financial exploitation; errors in medication administration of a prescription medication resulting in an adverse outcome, medication diversion; missed medical appointments required for maintenance of serious health conditions; significant injury to a service recipient; **suicide or attempted suicide; and unanticipated death**.
 - d. **“Delay of Treatment”** means when a service recipient, due to provider’s failure to seek treatment, does not receive a planned or emergency medical service (lab test, physical therapy treatment, **prescribed medication**, or any kind of significant treatment) that had been ordered for them in the timeframe in which it was supposed to be delivered; or a delay in seeking assessment and treatment for injuries or conditions that are a threat to the service recipient’s physical or mental health.
 - e. **“Emotional Abuse”** means the use of oral, written, or gestured language that includes disparaging and derogatory terms to or within the hearing distance of service recipients, residents or their families, regardless of their age, ability to comprehend, or disability. "Emotional abuse" includes the violation of resident rights and privacy through the posting of inappropriate materials on social media. "Emotional abuse" includes all of the following: ridiculing, demeaning, humiliating, bullying, or cursing at a patient or resident; punishment or deprivation; or threatening a ~~patient or resident with physical harm~~ **service recipient with harm or other adverse action**.
 - f. **“Infestation”** means the presence of lice, bed bugs or other pests sufficient to cause **discomfort, possible** harm, or medical symptoms in service recipients. Infestation is a reportable incident.
 - g. **“Non-Critical Incident”** means a reportable incident that has not resulted in observable physical, mental, **behavioral**, or emotional harm to a service recipient (adverse outcome); and does not present a significant or immediate threat to the health and safety of DDDS service recipients or are correctable issues not likely to cause immediate or significant harm or injury. This includes all incidents not classified as a critical incident such as: minor physical injuries, errors administering medications not identified as critical by the prescriber, service recipients not receiving preferred choice of foods, and other correctable issues not likely to cause immediate or significant harm or injury.
 - h. **“Nuisance Complaint”** means a service-related complaint that is likely to be part of a documented pattern of reporting not related to **potential actual** abuse, neglect or exploitation of a service recipient.
 - i. **“Physical Abuse”** means the infliction of pain or injury to a service recipient. This includes, but is not limited to, hitting, kicking, punching, slapping, pulling hair or **unauthorized physical restraints**. When any act constituting physical abuse has been proven, the infliction of pain is presumed. ~~These actions may be~~ **Incidents of physical abuse may include actions** taken by staff to service recipient; service recipient to service recipient (sometimes referred to as resident to resident); or other to service recipient.
 - j. **“Reportable Incident”** means an event that is witnessed by a mandated reporter, that has been reported to a mandated reporter, or that the mandated reporter has reason to suspect has occurred, including the following]: abuse (physical/ sexual/ emotional); bullying; criminal offense; delay of treatment; service recipient to service recipient incidents; elopement; financial exploitation; **financial mismanagement**; infestation; medication diversion; medication error; missed medical appointments; mistreatment; **any level of** neglect; significant injury; unanticipated death; property damage caused by the service recipient; abuse of substances; aggression of service recipient toward the general public; use of restraints not permitted in the person-centered plan or

as specified in DDDS policy; choking; or attempted suicide. An incident may be comprised of multiple component incidents or attributed to a combination of multiple causes and, therefore, may be substantiated with a combination of the sub-classifications listed below. For instance, a medication scheduling error that affects four service recipients shall be recorded as four individual reportable incidents; multiple errors affecting a single service recipient shall be recorded as multiple reportable incidents; a medication error may be attributed to a combination of lack of training, lack of supervision, and lack of properly documented procedures.

(approved February 23, 2021 from the Regulations Subcommittee)

29. DDDS shall update section 3.0 of the proposed 2103 “Reportable Incident Management and Corrective Measures” regulations with the necessary language as follows:
- “Elopement” shall be clarified to describe when the whereabouts of a service recipient was unknown and in contradiction with the level of support specified in the person-centered plan, regardless of whether or not the service recipient was harmed or law enforcement was involved in locating the service recipient.
 - “Financial Mistreatment” shall include two categories: financial exploitation and financial mismanagement.
 - “Significant Injury” shall include any sexual abuse.
 - “Sexual Contact” as referenced in the definition of “Sexual Abuse” shall be defined as it appears under § 761(g), Chapter 5, Title 11 of the Delaware Code.

(approved February 23, 2021 from the Regulations Subcommittee)

30. DDDS shall make the following terminology changes throughout the entirety of the proposed 2103 “Reportable Incident Management and Corrective Measures” regulations:
- a. “dereliction of duty” to “breach of duty”
 - b. “Incident-Level Quality Improvement Plan” to “Quality Improvement Plan”
 - c. Any reference of individuals receiving services to “service recipient”
 - d. “direct service staff” to “direct service professional”

(approved February 23, 2021 from the Regulations Subcommittee)

31. For organizational purposes, DDDS shall move the definitions of “critical incidents” and “non-critical incidents” to subsections of the “reportable incident” definition. (approved February 23, 2021 from the Regulations Subcommittee)
32. With the goal of providing improved care and service delivery for service recipients, DDDS shall review existing language describing what incidents need to be reported and streamline the current reporting process while working with other Divisions to achieve reporting uniformity. (approved February 23, 2021 from the Regulations Subcommittee)
33. DDDS shall work closely with all stakeholders to establish a standardized, comprehensive Risk/Vulnerability Assessment and Planning Process to be completed as an essential component within each individual’s Person-Centered Plan, developed or updated during the referral, transition planning, and admission processes and at least annually thereafter. This process will be finalized, and initial DDDS system-wide implementation of this process will begin on or before January 1, 2022. (approved March 30, 2021 from the Prevailing Service Delivery Issues Subcommittee)
34. DHSS’s Discharge Regulations shall be updated with a clear and aggressive process that requires DDDS to promptly, systematically, and effectively respond to 30-day notices of intent to discharge by providers. (approved March 30, 2021 from the Prevailing Service Delivery Issues Subcommittee)

35. The state of Delaware needs to increase funding to DDDS providers for all operational expenses through the DSP rate system, to 100% of the benchmarked levels as recommended by the DDDS market study update completed in 2019. This study concluded that these providers remain underfunded by over 35%, even after recent significant, but still inadequate, funding increases. The purpose of these funding increases would be to improve the recruitment and retention of a qualified workforce. (approved March 30, 2021 from the Prevailing Service Delivery Issues Subcommittee)
36. DDDS shall update the definition of neglect to include additional and quantifiable levels of severity. (approved March 30, 2021 from the Regulations Subcommittee)
37. DDDS shall work with appropriate stakeholders to develop an information sharing process for investigations, detailed in the proposed regulations, providing more transparency with service recipients, their agents under supported decision-making or POAs, legal guardians of service recipients, and service providers, while balancing the need to maintain investigation integrity. At minimum the process will address:
- That service recipients/agents/legal guardians/and certain family as approved by service recipient, agents, legal guardian, or operational law are officially notified by DDDS (or provider) of a reportable incident at the most appropriate time and method.
 - A sufficient level of detail that would enable a reasonable person to understand what was being investigated and why.
 - How often service recipients/agents/legal guardians/and certain family receive updates on incident investigations, and
 - How service recipients/agents/legal guardians/and certain family are notified/involved related to investigations and/or interviews directed by investigators/police.
 - A process to ensure protections to service recipients accused of behavior that may have criminal consequences.
 - How the conclusions of the investigations are communicated to the appropriate parties.
- (approved April 13, 2021 from the Regulations Subcommittee)
38. DDDS should develop separate and specialized DDDS service subsystems, structures, rates, and oversight for persons who exhibit exceptional behavioral, medical, and dual diagnosis needs. These systems shall be designed to include: a corresponding appropriate and higher wage differential to ensure that providers can recruit and retain the appropriately trained and qualified DSPs and other personnel providing these services; appropriate and adequate funding for quality operations; competitive reimbursement rates needed for all essential ancillary professional services within these systems. Funding should be available so that providers can hire Behavioral Analysts, Nurses, and Therapists, or consultants as might be needed, to meet the needs of the people served under these subsystems by placing a greater emphasis on the training of DSPs by these professionals, so that greater, more comprehensive supports can be provided to improve the overall quality of services to these individuals. (approved April 13, 2021 from the Prevailing Service Delivery Issues Subcommittee)
39. The state of Delaware, DDDS, and DSAMH need to develop Emergency Crisis Intervention and Inpatient Intensive Behavioral Support Services for persons in behavioral or psychiatric crises who cannot be safely and effectively served in their natural home or in the regular DDDS Provider system. (approved April 13, 2021 from the Prevailing Service Delivery Issues Subcommittee)
40. DDDS shall continue to work on an ongoing basis with a properly constituted Quality Improvement Advisory Council or similar group whose membership shall include family members, self-advocates, advocates, and providers to refine the person-centered assessment, planning, and documentation processes, including the documentation of these processes in Therap. The process shall include a clear description of what are the responsibilities of case management personnel in this process versus those

of the direct service providers. (approved April 13, 2021 from the Prevailing Service Delivery Issues Subcommittee)

41. DDDS shall revise the definitions and expectations of documentation that is done by DSPs who do not have time in a regular workday to produce the detailed narrative documentation that they are currently expected to prepare. Instead, DDDS should work with Therap to create an easy-to-use format that captures the minimum requirements for daily documentation and should develop a set of expectations for a quality review of this documentation by the provider's professional-level staff for the purpose of evaluating the effectiveness of the services being delivered, as was intended in federal regulations dating back to the 1980s. (approved April 13, 2021 from the Prevailing Service Delivery Issues Subcommittee)
42. To preserve the continuity of record-keeping and to ensure that the investments being made in the assessment and person-centered planning modules are secured, it is recommended that the General Assembly exempt Therap from the procurement schedule, for as long as it continues to meet the electronic record requirements of DDDS. (approved April 30, 2021 from the Prevailing Service Delivery Issues Subcommittee)
43. DDDS shall ensure that the person-centered planning process meets the federal standards. (approved April 30, 2021 from the Prevailing Service Delivery Issues Subcommittee)
44. DDDS shall develop and implement a three-step appeal process in which the first step shall be to the Corrective Measures Committee, the second step shall be to the DDDS Director, and the third and final step adapts the existing Fair Hearing process to ensure an independent review. In development of the Fair Hearing process, all appropriate updates to the DMMA Provider Policy Manual shall be made with involvement from applicable stakeholders. The Division shall develop and implement an appropriate training program for Fair Hearing Officers assigned to these reviews. Pursuant to the Provider Policy Manual, a respondent shall have the ability to proceed directly to the Division Director or the Fair Hearing Process for a review of the proposed action. This recommendation is subject to consistency with federal regulations. (approved April 30, 2021 from the Regulations Subcommittee)