

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DAIL

Department of Disabilities, Aging and Independent Living

TO: State of Vermont, Legislative Committee on Administrative Rules (LCAR)

FROM: Susan Wehry, Commissioner **DATE:** November 28, 2012

SUBJECT: Proposed changes to the Attendant Service Program Regulations

CHANGES ADOPTED EFFECTIVE: December 28, 2012 (30 days following LCAR agenda filing)

MANUAL REFERENCE(S):

Introduction - Policy	Update DAIL mission
102. Purpose	Population description
103. Definitions	Clarify terminology
104. Applications	Update process
105. Eligibility Criteria	Clarify eligibility
106. Eligibility Determination	Propose elimination of committee system
107. Services	Define ADLs and IADLs
108. Extent of Services	Clarify operations
109. Participants	Update language and format
110. Personal Assistants	Update definitions
111. Confidentiality	Update language
112. Appeals	Update language and definitions
113. Grievances	Correct format
114. Program Evaluation	No change
115. General Fund Policy	Propose elimination of this section

DAIL proposes several updates to the Attendant Services Program Regulations. Included are multiple language changes that align the regulations to current practices and definitions. Significantly, DAIL proposes the elimination of the eligibility determination system. As discussed below, this is primarily based on the recommendation that the committee system no longer best serves its initial function. Assessments currently carried out by licensed nurses who possess the skills to conduct evaluations and most often very little difference is found between nurse and committee recommendations. This does not preclude the agreed upon need for more relevant peer and DAIL engagement with participants of the Attendant Services Program.

I.

Attendance Services Program in Vermont

A. *Background*

The Attendant Services Program (ASP) was established over 20 years ago. This represented significant accomplishment for the civil rights movement and the Americans with Disabilities Act. The ASP is funded through Medicaid State Plan and General Funds, and is based upon functional eligibility.

When the ASP was founded, regional committees were formed to determine eligibility for an applicant in the region in which the participant resided. Regional Committees have not been in place or used for the last 12 - 15 years, with the Statewide Eligibility Committee serving that function. For the past 3 years the DAIL's staff (RNs) have served the function of assessment and award recommendations.

During this time, multiple updates have also been made to program definitions and practices that are not accurately reflected in the regulations.

DAIL recognizes and strongly supports that new avenues of engagement should be sought in response to the changing nature of our current realities, in addition to the reinstatement of the ASP Annual Meeting and continuation of the Consumer Satisfaction Survey. Technological advances may also support broader participant engagement. We look forward to engaging the ASP community in this discussion.

II. **Specific changes**

Section	Description of change
101-114	Proposed changes are varied and are contained in the Annotated text of the Attendant Services Program Regulations, draft dated July 15, 2011. No new changes have been proposed during the Rulemaking Process; all proposed changes are responded to below.
106	Eligibility Determination – in particular, we propose this section of the regulations be eliminated in its entirety.

III. **Rulemaking Process – Public Input**

- July 2011 – current Eligibility Committee for the Attendant Services Program was informed of the proposed changes to the regulations.
- July 2011 – Copies of the proposed changes mailed to the current Eligibility Committee.
- November 2011 and April 2012 - Proposed regulation changes were presented to the DAIL advisory board.
- March 2012 - Proposed regulations and public hearing posted on Secretary of State and DAIL websites.
- April 2012 - Public hearing April 2012. **No attendees.**
- July 2012 - DAIL extended public comment period through **August 31, 2012**. Posted new information to DAIL website.
- July 2012 - Notification by mail to all ASP participants with invitation to provide feedback by mail, phone, fax, email, or in person. **23 responses received by mail and phone.**
- July 2012 - Notification to advocacy groups of extended public comment period. **4 written responses received.**
- August 2012 - Participant feedback meeting held at VCIL. **6 attendees** (2 participants, spouse of participant, VT Legal Adie, VCIL, DRVT)
- November 28, 2012 – When final proposed rule changes are submitted to LCAR, documents will be posted to the DAIL website and stakeholders will be informed of their availability.

IV.
DAIL Comments and Responses

As noted above, DAIL received 33 total written, phone, and in person comments, all of which are captured in the Copy of Comments package (all raw comments received). These included 25 from participants (plus one spouse of participant) and 7 from advocacy groups.

Letters included those received from the Statewide Independent Living Council (SILC), Vermont Center for Independent Living (VCIL), and the Disability Law Project. VCIL and the Disability Law Project were also present at the participant feedback meeting in August 2012 where we engaged a line by line detailed discussion of the proposed changes to the regulations.

Participant feedback focused on the central proposed regulation change, the elimination of the committee system for review and service determination. Overall, participants supported this change, as can be seen in the Comments package. Highlights of that support are included below. Confidentiality concerns were cited in some cases. While it may be indicated that the committee no longer best serves its original purpose, related questions of engagement were brought to light.

A common concern is that DAIL needs to find more meaningful peer engagement. Several ideas have been suggested; although this work remains outside the scope of the regulations, DAIL is strongly committed to engaging this conversation in the following months. In support of this goal, DAIL chose to retain the regulation language concerning Annual Meetings and will move to reestablish these. Additionally, DAIL will continue the Customer Satisfaction survey that currently occurs.

Set forth below are DAIL responses to comments. This shows several cases of DAIL reversing originally proposed changes, as well as notation of proposed changes that have been retained. Through the course of discussion and feedback, DAIL agreed that several proposed changes, although they were intended by the authors to clarify language, were unnecessary changes that raised unintended concerns. These cases are noted below.

COMMENTS		RESPONSES
1	<p><u>Page 3, Policy, 2nd paragraph, last two sentences</u> –</p> <p><u>Comments:</u> Commenters concerned that the change makes it appear as though DAIL intends to remove General Funds as an ASP service option. Commenter recommends keeping this paragraph in tact.</p>	<p><u>Response:</u> DAIL does not intent to remove General Funds (GF) services from these regulations. See 105 Eligibility Criteria for reference to all service options, including those funded by General Funds. The purpose of the change on Page 3, 2nd paragraph was to simplify the wording to more accurately reflect requirement to utilize Medicaid funding before GF.</p> <p><i>Recommendation:</i> DAIL recommends reversing the proposed change to the 1st sentence and keeping the proposed change to 2nd second sentence. This will maintain reference to GF while removing unnecessary language.</p>
2	<p><u>Page 4, 103. Definitions, (a) “Action”–</u></p>	<p><u>Response:</u> DAIL removed reference to #4, #6, and the “note” because the program is 100%</p>

	<p><u>Comments:</u> Commenters asked why is definition #4, #6 and the “note” removed.</p>	<p>consumer directed with no DA/SSA involvement and there is no “provider network”. The proposed change makes the regulations accurate. No opposition to this change after discussion at the participant feedback meeting.</p> <p><u>Recommendation:</u> DAIL recommends keeping the proposed change.</p>
3	<p><u>Page 4, 103. Definitions, (b) “Activities of daily living” –</u></p> <p><u>Comments:</u> - Commenters asked why change definition of Activities of Daily Living if no intention of eliminating or changing services or eligibility criteria? - Commenters noted that the new language appears to change the covered services, which is not the intent of the change. - Concerned that some of the proposed changes appear to eliminate assistance with some Activities of Daily Living.</p>	<p><u>Response:</u> The intent of this change was to clarify the definition and be more in line with other DAIL programs, not to eliminate or change services.</p> <p><u>Recommendation:</u> After listening to comments, DAIL recommends reversing the proposed change to the definition of ADL and reverts to previous definition, since the intent is not to change eligibility or coverage for services.</p>
4	<p><u>Page 4, 103. Definitions, (g) “Attendant Services” –</u></p> <p><u>Comments:</u> - Commenter asked why change definition of “Attendant services” to be more restrictive to extensive/total only? - Three commenters stated that cueing and supervision are important. - One commenter supported the proposed change, stating that the program is not for people who can not self-direct so should not include language that makes eligibility coverage too broad, to include people who need only cueing and supervision. This commenter felt that allowing cueing and supervision may open the door to serving people who can not self-direct, so supports the proposed change.</p>	<p><u>Response:</u> It is important that people who have a need for two Activities of Daily Living meet the standard of the program in Eligibility section #105. The proposed definition of “Attendant Services” on page 4, reinforces the focus of the program as being consumer directed and is how the program is currently administered. Once a person is eligible, the department still has the ability to award time for cueing/standby assistance for activities as long as the person meets eligibility standards.</p> <p><u>Recommendation:</u> DAIL recommends keeping the proposed language according to recommended change.</p>
5	<p><u>Page 5, 103. Definitions - (l) “Extensive Assistance” –</u></p> <p><u>Comments:</u> Commenter was concerned about adding the</p>	<p><u>Response:</u> The definition of “Extensive Assistance” on page 5 is standard to existing DAIL assessment tools and program administration. Adding it to the regulations is for clarity and does not change practice.</p>

	<p>definition of “extensive assistance”, feeling it was more restrictive.</p>	<p><i>Recommendation:</i> DAIL recommends keeping the proposed definition as is.</p>
6	<p><u>Page 5, 103. Definitions - (r) “Permanent and Severe Disability –</u></p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> - Commenters were concerned that defining “permanent and severe disability” as “lasting the duration of an individual’s life” is too hard to verify and may eliminate people from eligibility who have a conditions that may or may not be life long. Commenters suggested adding the word “likely” before “last” would qualify the definition. - Two commenters reminded that is it good to clarify the intent of the program to serve people with physical disabilities who can direct their own care. 	<p><u>Response:</u> The term “Permanent and severe disability” is not new to program eligibility requirements. Addition of a definition on page 5 is simply to clarify the meaning of a term that is essential to the existing eligibility standards. “Lasting the duration of an individual’s life” is in line with the standardized definition of “permanent”. Therefore department feels that the proposed definition is reasonable and that adding the word “likely” to the definition risks making the definition too broad and undefined.</p> <p><i>Recommendation:</i> DAIL recommends keeping the definition as proposed in order to stay in line with the intent of the program and existing eligibility standards.</p>
7	<p><u>Page 6, 103. Definitions - (t) “Person with Disabilities” –</u></p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> - One commenter concerned that removing psychological from the definition of “Person with a disability” will limit who can be found eligible for the program. - Two other commenters felt it was important to maintain the intent of a self-directed program, so OK to take out “psychological” if that is the intent. However they don’t want a change to limit program eligibility where appropriate. 	<p><u>Response:</u> After reviewing comments, DAIL determined that the definition of “Person with a disability” on page 6 is not required in the regulations at all because the term “Person with a disability” does not appear anywhere within the regulations. In addition, there is already a proposed definition of “Permanent and Severe Disability” for the purpose of program eligibility.</p> <p><i>Recommendation:</i> DAIL recommends removing this entire definition to eliminate unnecessary confusion or perceived bias.</p>
8	<p><u>Page 6, 103. Definitions - (o) “Primary Services –</u></p> <p><u>Comments:</u></p> <p>Commenter asked for clarity why definition was being removed.</p>	<p><u>Response:</u> The definition of “primary services” and “secondary services” duplicates the definition of ADLs on page 4. Commenters made no objection to the clarification after discussion.</p> <p><i>Recommendation:</i> DAIL recommends keeping the proposed change.</p>
9	<p><u>Page 6, 103. Definitions - (q) “Secondary Services –</u></p> <p><u>Comments:</u></p> <p>Commenter asked the same question as for “Primary Services” in #8.</p>	<p>See above response and recommendations in #8.</p>
10	<p><u>Page 7, 105 Eligibility Criteria - (b) Personal</u></p>	<p><u>Response:</u> The Personal Services option under</p>

	<p><u>Services –</u></p> <p><u>Comments:</u> Commenters concerned that adding this language under #3 about being at “risk of institutionalization” will limit participation in Personal Services.</p>	<p>ASP is already limited only to people who are currently on ASP but can no longer direct their own care. Addition of criteria to also be at “risk of institutionalization”, further limits the service option.</p> <p>After considerations, DAIL does not intend to limit participation on Personal Services if a person continues to meet the program standards and can no longer direct their own services. In addition, because individuals must still meet the standard of “Permanent and Severer Disability”, it does not add to the intent of the regulations to insert the additional requirement “or to be elderly” in #1.</p> <p><u>Recommendation:</u> DAIL recommends reversing the proposed change under (b) Personal Services, #1 and #3.</p>
11	<p><u>Page 7, 105 Eligibility Criteria – (c) Participant-Directed Attendant Services #4, (d) Medicaid Participant-Directed Attendant Services #6, (e) Group Directed Attendant Services, #6</u></p> <p><u>Comments:</u> Commenters asked why the statement “Be ineligible for any other Medicaid or state-funded programs.” was added to the criteria in this section. The same topic for all three sections (c), (d), and (e).</p>	<p><u>Response:</u> ASP currently restricts the use of state General Funds services to people who have been found ineligible for Medicaid. This is not a new practice and is already in the regulation. Therefore, it is important to add clarity in the eligibility criteria section. Discussion occurred with no opposition.</p> <p>After review of comments, DAIL recognized it was an error to add this restriction to (d) Medicaid Participant-Directed Attendant Services option, since that is already a Medicaid covered service option and does not require a person to exhaust other Medicaid services options before being found eligible.</p> <p><u>Recommendation:</u> DAIL recommends keeping the proposed changes on page 7 to (c) Participant-Directed Attendant Services and (e) Group Directed Attendant Services to reflect current requirements and practice and to reverse the change to (d) Medicaid Participant-Directed Attendant Services, #6.</p>
12	<p><u>Page 8, 106 Eligibility Determination - Committee System</u></p> <p><u>Comments:</u> - (Participant) Everything works well for me. It is more personal when I see the nurse assessor in person. Don’t know whether I feel one way or another about the committee. We need to save money for the state.</p>	<p><u>Response:</u> The regulation change under eligibility determination on page 8 is intended to eliminate the additional step of a peer eligibility committee review. The purpose of the change is to improve timely access to the program, improve confidentiality of health records and cost savings. The majority of participants that provided feedback were in support of eliminating the eligibility committee</p>

- (Participant) It is working really well for me. My worker is great. The process with my nurse assessor went well. As long as I'm not losing services then I'm OK with the changes and stopping the committee.
- (Participant) The assessment process with the nurse went well. OK with not having a committee as long as the eligibility and coverage rules to not change.
- (Participant) I am pleased with the regulation changes. My experience with the (DAIL) nurse who comes to see me was positive and I believe that by seeing me in person she has more information to determine my need for help than a peer group revisiting the information she would provide. I am also happy that my medical information will not be shared with other non-professional people.
- (Participant) The elimination of the peer committee system seems sensible to me.
- (Participant) Sounds like the committee is not very necessary. But it is important to keep someone with a disability involved.
- (Participant) I think it is fine as long as actual people with disabilities are included in the process some how. Nothing about us without us!
- (Participant) I like the elimination of the committee decision-making process.
- (Participant) After being on the aps board for many years I have seen nurses' evaluations be inconsistent. I therefore do not think there will be more consistency in their awards than the committee members. I believe there is no better way to evaluate people with disabilities than people with disabilities. I think there are more chances of abuse in awards if 1 nurse goes to the same household every year than having a group of 2 or more looking at an eval.
- (Feedback meeting) Four commenters at the participant feedback meeting felt that the committee is important because they are people who also have a disability. They are worried that

review process. However, several advocates feel strongly that having an eligibility committee or other means of getting feedback from people on the program is critical.

After reviewing comments, DAIL agrees that continuing to get participant feedback and involvement in the program is important and must continue. DAIL plans to continue administering the Long-Term Care Consumer Satisfaction Survey on an annual basis. DAIL also encourages the current eligibility committee members to apply to become active DAIL advisory board members.

Recommendation: DAIL recommends keeping the proposed changes that reflect the elimination of the eligibility committee, while adding ways to receiving regular feedback from people on the program.

without the committee, the Department will not do a good job in helping people get what they need. They stated that if no committee, the Department must do some form of participant feedback. They suggest annual participant meetings or regional meetings. One commenter felt that DAIL should always have someone with a disability involved in the program. One commenter stated that committee members felt they were having an effect on the process. One commenter suggested if the committee remains, that work be done to help it be more effective.

- (DAIL Advisory Board Member) I understand that the committee's recommendations may differ from DAIL nurses' recommendations as often as 1/3 of cases. I think the input of the statewide committee would be by definition, valuable. If I misunderstand the role of the committee, I still think it's wise to solicit a wide range of involvement especially consumer involvement.

- (Statewide Independent Living Council) SILC would like to share its concern over the potential elimination of the ASP eligibility committee. We feel the services can only be optimized if input from peers who use the program's services is considered seriously.

- (VT Center for Independent Living) VCIL has always been committed to the idea that ASP should have oversight by people who need attendant services. VCIL believes that the eligibility committee is essential to the program and that having a review team of people who actually use it adds value and substance to the program. VCIL is interested in ensuring there is a survey of ASP participants annually.

- (VT Legal Aid) VLA - This policy change also includes the elimination of the participants in the Eligibility Determination Committee. While we understand that this committee has been weak, without some form of participant direction, through an advisory committee or otherwise, this program has the potential to lose touch with the people it serves. This program needs to be informed by some form of participant direction.

	<p><u>Circumstances –</u></p> <p><u>Comments:</u> One commenter suggested to not remove reference to a “special circumstance” in the regulations. Commenter concerned this will limit the Department’s ability to help people.</p>	<p>giving a special circumstance for more hours when a personal assistant (caregiver) can not perform their duties. Because granting more hours is not the tool used to replace a personal assistant when they can not perform their duties, this specific section is not necessary and is confusing to the process. Changing this section does not change the program’s existing ability to grant additional hours to meet an identified need for additional attendant services.</p> <p><u>Recommendation:</u> DAIL recommends keeping this proposed change. DAIL will continue the current practice of helping participants when they have a temporary need for additional hours due to a change in circumstances.</p>
14	<p><u>Page 15, 112, Appeals – (e) Notices, Continuation of Services, Participant Liability for Service Costs – (paragraph #1 & #2) -</u></p> <p><u>Comments:</u> Commenter is concerned that by adding the word “Medicaid” to paragraph #1 and #2, continuing benefits (pending appeal) will be eliminated for individuals on the General Funds program.</p>	<p><u>Response:</u> DAIL added the word “Medicaid” for clarity. Only programs with federal financial participation (such as Medicaid) are required to provide continuing benefits throughout appeals. It has never been the practice of DAIL to continue benefits for individuals on General Funds programs. Therefore, this clarity is not a change in benefits to the individual.</p> <p><u>Recommendation:</u> DAIL recommends keeping this proposed clarity of wording to the regulations.</p>
15	<p><u>Page 17, 114, Program Evaluation - (a) Annual Survey –</u></p> <p><u>Comments:</u> Commenters concerned that by removing reference to the DAIL annual consumer satisfaction survey, it gives the impression that DAIL intends to discontinue the survey.</p>	<p><u>Response:</u> DAIL removed reference to its annual survey because DAIL feels that reference to surveys is not typically found in regulation and leaving it in potentially limits the Department’s flexibility in identifying the best way to manage quality within the program. DAIL plans to continue annual consumer satisfaction surveys.</p> <p><u>Recommendation:</u> DAIL recommends reversing this proposed change since it intends to continue administering its annual consumer satisfaction survey, which includes ASP participants.</p>
16	<p><u>Page 17, #114, Program Evaluation - (b) Annual Meetings -</u></p> <p><u>Comments:</u> Commenters feel that having an annual meeting is important, especially if DAIL intends to</p>	<p><u>Response:</u> DAIL removed reference a participant annual meeting because the meeting has not been in practice for many, many years. DAIL also feels that reference to meetings is not typically found in regulation and leaving it in potentially limits the Department’s flexibility</p>

	<p>remove the eligibility committee review process.</p>	<p>in identifying the best way to manage participant feedback. DAIL plans to work with advocates and participants to determine the most effective way to collect and use participant feedback, which may include an annual participant meeting.</p> <p><i>Recommendation:</i> DAIL recommends reversing this proposed change since it intends to continue working with advocates to re-establish an annual participant meeting.</p>
17	<p><u>General Participant Feedback –</u></p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> - “The changes are fine with me.” - “This program is important to me and serves me well. I hope it continues and thrives.” - “We think the changes are fine and good. We have no problem with the changes.” - “It has been a pleasure knowing that we are working together toward a goal of helping to make lives better, which I’m ever so grateful.” - “No feelings one way or another.” - “The changes seem reasonable.” - “It seems pretty straight-forward.” - “We are blessed to get this help and any way the state can save steps and money is a great thing. Thank you for keeping up the good work.” - “I agree with the new regulations.” - “I think the recommended regulation changes will benefit the asp as well as it’s participants.” - “Changes seem very logical!” - “I don’t understand the changes. The current program seems to be working fine.” - “No changes needed.” - VT Legal Aid (VLA) - “There are other crucial changes proposed that were not noticed on the 	<p><u>Response:</u> DAIL considered all participant feedback in the responses and recommendations above. In making the regulation changes because of comments above, DAIL also removed any significant changes that were not addressed in the cover page or summary.</p> <p><i>Recommendation:</i> DAIL has removed changes relating to eligibility and services that could have been restrictive, as described above.</p>

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More information on the Attendant Service Program is available on the DAIL/DDAS website at: <http://www.ddas.vermont.gov/ddas-programs/programs-asp-default-page> or by calling Megan Tierney-Ward at 802-871-3047

For information on upcoming hearings before the Legislative Committee on Administrative Rules go to the website of the Vermont Legislature at: <http://www.leg.state.vt.us/schedule/schedule2.cfm> or call 828-5760.

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Annotated Rule Text showing changes follows after this coversheet, as well as a clean text of the proposed rule.