

Department of Health and Human Services  
Developmental Disabilities

PI-23-13

**To:** Regional DD Program Administrators  
DD Licensed Provider Agencies

**From:** Tina Bay, Director, Developmental Disabilities

**Re:** Virtual Supports – Select Services within the Traditional IID/DD Home and Community Based Services Waiver

**Effective Date:** November 1, 2023

**Purpose**

The purpose of virtual supports is to maintain or improve an individual's functional abilities, enhance interactions, support meaningful relationships, and promote their ability to live independently, and meaningfully participate in their community.

**Authority**

§1915(c) of the Social Security Act

North Dakota 1915c Traditional IID/DD Home and Community Based Services Waiver  
ND.0037

**Definitions**

1. "Individual" means an individual found eligible as determined through the application of NDAC chapter 75-04-06 for services coordinated through intellectual disabilities-developmental disabilities program management, on whose behalf services are provided or purchased.
2. "DD licensed provider agency" means an organization that operates programs/services licensed by the North Dakota Department of Health and Human Services-Developmental Disabilities.
3. "Department" means the North Dakota Department of Health and Human Services (DHHS)

4. "Developmental Disabilities" (DD) means the section within the North Dakota Department of Health and Human Services responsible for licensing of services pursuant to NDCC chapter 25-16 and NDAC 75-04-01.
5. "Nonpublic facing " means a remote communication product that, as a default, allows only the intended parties to participate in the communication.
6. "Virtual supports" means the use of interactive audio and video telecommunications technology by a DD licensed provider agency or authorized vendor at a distant site to deliver approved Home and Community Based Services at an originating site, over a secure connection that complies with the requirements of state and federal confidentiality laws.

### **Services Allowed for Virtual Supports**

- Behavioral Consultation
- Independent Habilitation
- Individual Employment Services
- Parenting Supports
- Infant Development- Home Visits
- Infant Development- Early Childhood Special Education Consultation
- Infant Development- Nursing Consultation
- Infant Development- Occupational Therapy Consultation
- Infant Development- Physical Therapy Consultation
- Infant Development- Speech Consultation
- Infant Development- Social Work Consultation

**\*\*This policy does not apply to program coordination, supervision, DD program management, or other non-direct support tasks.**

### **Standards and Requirements**

#### **A. Virtual Supports**

1. Virtual supports are not a distinct, separate service under the North Dakota 1915c Traditional IID/DD Home and Community Based Services Waiver (DD Waiver), but a method by which certain services (listed above) may be delivered to an individual.
2. The purpose of virtual supports is to maintain or improve an individual's functional abilities, enhance interactions, support meaningful relationships, and promote their ability to live independently, and meaningfully participate in their community.
3. Virtual supports are geared towards intentional learning (e.g., career planning, taking a cooking class, skill building) and can also be used towards helping a person do something more independently like remote job coaching.

## **B. Virtual Supports Requirements**

- 1.** Direct support can be delivered via virtual supports, provided that it meets all of the following requirements:
  - a.** The virtual supports ensure the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.
  - b.** The virtual supports do not isolate the individual from the community or interacting with people without disabilities.
  - c.** Virtual supports reinforce community integration by encouraging the individual to engage in community life as independently as possible, to be able to safely engage in activities in his or her home or in the community without relying on the physical presence of staff to accomplish those activities.
  - d.** The individual has other opportunities for integration in the community. i.e., daycare, shopping, community appointments, volunteering, church, social and recreation activities, etc.
  - e.** The use of virtual supports to provide direct support has been agreed to by the individual and their team.
  - f.** The provider will ensure that the individual knows how to use the needed technology and it can be used safely.
- 2.** Individuals must have an informed choice between in-person and virtual supports.
  - a.** The individual must always have the option to request in-person services
  - b.** Services may not be delivered via virtual support 100% of the time. Virtual supports may supplement in-person direct supports
  - c.** Individuals must affirmatively choose virtual service provision over in-person supports.
- 3.** The use of virtual supports is to provide direct support for pre-planned activities that are outlined in the Person-Centered Plan. The plan must identify:
  - a.** What tasks, supports and objectives can be done remotely and what needs to be done in person.
  - b.** Identify the technology platform used to deliver the support (e.g., Microsoft teams, zoom for healthcare)
  - c.** List the service identified as virtual with an estimated number of hours that will be delivered.
- 4.** Virtual supports are not intended to be used to shorten drive time, save on costs, account for lack of staff, for storm days that are not pre-planned and identified in the person center plan, out of convenience for the provider, or to provide surveillance.

5. The virtual supports must be delivered with the individual present using a non-public facing technology platform over a secure connection that allows real-time interaction that includes audio and visual capabilities so that the staff member can both see and hear the individual. Virtual Supports cannot be recorded.
6. Text messaging, phone calls, and emailing do not constitute virtual supports and, therefore, will not be considered provision of direct supports under the DD waiver.
7. The use of cameras during virtual supports in bathrooms or bedrooms:
  - a. **Individual Employment Supports-** Use of cameras in the bathroom and bedroom are never permitted.
  - b. **Behavioral Consultation-** Use of cameras in bathrooms are never permitted. Use of cameras in bedrooms may be permitted if there is no impact to the individual's dignity and privacy.
    - i. For example, identifying a place where the individual goes to calm, which may be the bedroom.
  - c. **Independent Habilitation, Infant Development, and Parenting Supports-** Use of cameras in bathroom and bedrooms may be permitted if there is no impact to the individual's dignity and privacy.
    - i. For example, there may be some tasks allowed such as brushing teeth, choosing clothes, or medications that do not impact the individual's dignity and privacy.
    - ii. Infant development services are provided within the context of daily routines, therefore, in virtual supports, this may mean that parent coaching is provided during a toileting or bathing routine and camera use would be appropriate and would not violate the dignity of the individual.
8. The virtual supports technology platform must support compliance with state and federal confidentiality laws including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to protect the privacy and security of the individual's protected health information.
9. Virtual supports, including use of phones, cannot be used to assess an individual for a medical emergency.
  - a. The Emergency Backup Plan section of the service plan should address medical emergency needs when virtual supports are delivered.
10. Virtual supports must comply with all federal and State requirements, policies, guidance, and regulations.

11. Virtual supports may be started or discontinued at any time at the individual and/or legal decision maker's request and a team meeting must occur to discuss other options.

### **C. Service Limitation and Utilization**

1. The combination of virtual supports and direct supports for a given service cannot exceed services authorized.
2. A Virtual Support Checklist ([SFN 1522](#)) will be required to be completed by the DD Program Manager and the team during the person-centered planning process and determine an estimated number of hours.
  - a. Virtual Support Checklist will be required to be completed prior to start of virtual supports and annually. It will act as a safeguard to ensure virtual supports can help meet the needs of the individual in a way that protects the right to privacy, dignity, respect, and freedom from coercion. Any issues will be addressed prior to the implementation of remote supports.
  - b. The checklist must be attached to the service plan in Therap.
3. Virtual supports cannot be furnished or billed for two services at the same time (e.g., Independent Habilitation and Individual Employment Supports).
4. If the individual requires hands on assistance for a specific task, then virtual supports service delivery cannot be an option for that task but may be utilized for other tasks that do not need hands on support.

### **D. Providers**

#### **1. DD Licensed Provider**

DD Licensed Providers may choose to provide Virtual support options under the DD waiver services as noted above.

- a. The DD licensed provider will need to identify on the licensure application the service(s) they choose to provide virtually.
- b. The DD Licensed Provider must develop and maintain written policies to address processes for preventing and responding to a medical emergency during use of virtual supports, train direct support staff on those policies, and advise individuals and their person-centered planning team regarding those policies. At a minimum, such policies must address:

- 1) Identifying whether the individual's needs, including health and safety, can be addressed safely via virtual supports;

- 2) Processes for requesting such intervention if the individual experiences an emergency during provision of virtual supports, including contacting 911 if necessary;
- 3) How the provider will ensure the individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint;
- 4) How the provider will ensure the virtual supports used meets applicable information security standards;
- 5) How the provider will ensure its provision of virtual supports complies with applicable laws governing individuals' right to privacy;
- 6) Process on how to discontinue virtual supports when the individual's needs, including health and safety, can no longer be addressed via virtual supports;
- 7) Contingency plan for service delivery if technology fails during a virtual supports service or an individual does not connect at a scheduled time;
- 8) Incorporate virtual supports into their privacy and security (confidentiality) policies and procedures. Including how/where staff can provide supports in a location that promotes privacy and confidentiality.

- c. The use of virtual supports must be documented appropriately, just like any in person direct supports (name of staff person providing service, name of provider, name of service, date of services, and start/end times), **AND** identify the technology platform used.
- d. The DD Waiver will not fund any costs associated with the provider obtaining, installing, implementing, or using virtual supports. These costs, in the delivery of new business models, are part of the provider's operating cost.

Examples of costs that will not be funded by the DD Waiver programs are:

- 1) Equipment;
- 2) Internet;
- 3) Software applications;
- 4) Training and support for the individual using virtual supports; and
- 5) Other related expenses such as additional staff and training.

- e. The provider ensures that any and all services delivered via virtual supports will change to in-person service delivery if chosen by the individual and/or the legal guardian.

## **2. Behavioral Consultation Providers (Self-Directed)**

Any provider or vendor who offers Behavior Consultation must comply with A & B below.

- a. The DD Waiver will not fund any costs associated with the provider obtaining, installing, implementing, or using virtual supports. These costs, in the delivery of new business models, are part of the provider's operating cost.

Examples of costs that will not be funded by the DD Waiver programs are:

- 1) Equipment;
- 2) Internet;
- 3) Software applications;
- 4) Training and support for the individual using virtual supports; and
- 5) Other related expenses such as additional staff and training.

- b. The provider ensures that any and all services delivered via virtual supports will change to in-person service delivery if chosen by the individual and/or the legal guardian.

## **3. Infant Development**

Infant Development Providers must follow all compliance for DD License Providers listed above and the following.

- 1. Evaluation/Assessments and initial/annual IFSP development must be completed in person, with the exception of children in the NICU. IFSP reviews, home visits and consultations may be conducted virtually.
- 2. Virtual visits are expected to satisfy all requirements of the pay-point and maintain the same level of quality provided during in-person visits. State and program best practices must continue to be used.
- 3. Virtual Visit Follow-Up:
  - a. All paperwork (Prior Written Notices, IFSP Signatures, etc.) must still be completed timely and with one of the acceptable types of signatures (wet signature or digitally signed- not typed).

- b.** If, while receiving virtual visits, a child or family is not making progress commensurate to the level expected if the services were provided in-person, the team must meet to discuss changing services to in-person.

#### **E. Quality Assurance**

- 1.** At least annually or more frequently if needed, individuals and their teams shall review the quality and effectiveness of virtual supports to meet the individual's assessed needs and preferences.
- 2.** The DDPM shall review and document satisfaction and progress of virtual supports during the quarterly review process (QER).
- 3.** Health and safety concerns that may arise shall be discussed in the team process or other appropriate means.