

Summary of Public Comments Received and ODP Responses Regarding the Proposed Fee Schedule Rates for Services Impacted by Amendments to ODP's Consolidated, Community Living, P/FDS and Adult Autism Waivers

The Department published public notice at 51 Pa.B 6564 (October 16, 2021) which included proposed waiver amendments as well as proposed Fee Schedule Rates for services impacted by the waiver amendments. The waiver amendments were submitted to the Centers for Medicare and Medicaid Services (CMS) on January 3, 2022, with a proposed effective date of May 1, 2022. The Office of Developmental Programs (ODP) will notify stakeholders of the approved effective date of the Waiver amendments and rates through publication of a communication via ODP's Listservs. The Department received comments on the notice from 30 people and organizations.

The following is a general summary of comments received in response to the proposed Fee Schedule Rates and rate setting methodology:

- Twenty-two comments were received on the rate setting methodology, in general.
 - Two comments recommended that rates be evaluated annually. One comment recommended that rates be rebased every three years.
 - One comment asked that ODP disclose all formulas, references and factors used in rate setting.
 - One comment asked that ODP index rates against a standard such as the Medicare Market Basket Index.
 - One comment urges ODP to take geographic differences into consideration.
 - One comment noted that unemployment compensation should be included in the rate assumptions.
 - One comment said that assumptions on health insurance costs are inaccurate, that prescription coverage is much higher than reflected in the assumptions, and asking why three different rates for health insurance are cited in the rate assumptions.
 - One comment recommended two additional training days for DSPs to reflect high turnover.
 - One comment recommended that PTO days should be 17 in addition to 11 paid holidays.
 - One comment said that the normal supervisor ratio for DSPs is 1:10 to help keep turnover down.
 - One comment said that administrative percentage costs are 15 percent, not the 10 percent shown in the rate assumption logs.
 - One comment expressed concerns that ODP worked collaboratively with stakeholders but did not incorporate that feedback into the rate assumption logs.
 - One comment asked that ODP strictly adheres to mandatory rate setting assumptions.

- One comment suggested that the current practice of using a Commonwealth-specific compensation study and supplementing it with data from the Bureau of Labor Statistics database is a flawed practice since the former would only reflect rates that contracted providers can afford to pay under the fee schedule and the latter does not have a Standard Occupational Classification for Direct Support Professionals for HCBS services provided to ID/A waiver participants. The same comment asked that ODP use the hourly wage rate of \$18.66 paid to state employees in state centers instead of the \$14.38 average paid to DSPs in fee schedule rates, as it is the only currently available market reference for DSP wages available in the Commonwealth. The same comment said such a change would address the market-driven provisions specified in regulation that address the development of fee schedule rates.
- One comment suggested that the methodology is incomplete without the addition of program management, which is the management between direct support and the administration of a non-profit agency. The commenter suggested that the rates should include direct care and related supervisor, program management, and administration.
- One comment said that transportation costs incurred by DSPs as part of their jobs, such as driving participants long distances in rural areas to participate in community activities, with gas at \$3.50 or more a gallon, are too burdensome. This commenter recommended that providers be reimbursed mileage when providing services in accordance with the individual's ISP.
- One comment said that DSPs who engage in "everyday life" activities with the participants they serve, such as going out to eat, must pay their own way, and those costs should be factored into the rates.
- One comment noted the struggles facing providers in hiring and retaining staff because retail and food service establishments can offer higher hourly rates.
- One comment supported rate increases significant enough to pay staff a wage commensurate to the real value of the work, attractive enough to land talented employees and enough to provide a professional ladder to DSPs.
- One comment asked who is checking income of upper management compared to DSPs and whether providers are expected to pay back funding when a "wrong-doing" is discovered.
- One comment stated that attendance at an ISP meeting should be billable and that rates need to address real-time costs of documentation requirements.

ODP's response: The Department will update the data used in subsection §6100.571(b) to establish fee schedule rates at least every 3 years in accordance with regulatory requirements. The proposed Fee Schedule Rate assumptions use a market-based approach so that payments account for adequate staff wages. The fee schedule rate methodology explains that the Department evaluates and uses various independent data sources such as a Pennsylvania-specific compensation study to ensure the rates reflect the expected expenses for the delivery of services under the waivers for the major allowable cost categories including occupancy, staff-related expenses, and administration-related expenses.

- Nine comments were received regarding the Medically Complex Life Sharing rates.
 - One comment asserted that it is difficult to assess whether the rates would support the level of nursing needed for this service.
 - One comment was in support of the addition of a new rate for this service.
 - One comment asked how the rate was established and if the Supports Intensity Scale is being used.
 - One comment asked if there is a tier of rates or just a single rate for individuals deemed medically complex.
 - One comment asked if the proposed rate continues after the individual “ages out” of the service, and if there is consideration for a higher rate once the individual reaches age 22.
 - One comment does not support a 2-person rate for Life Sharing and recommends that there is no decrease in rate for 2-person Life Sharing arrangement.
 - One comment stated that the stipends listed in the rate assumption logs are too low for this service and asked for an increase.
 - One comment stated concerns that rate assumption logs for Life Sharing for individuals with a medically complex condition are based on outdated data and do not use a market-based approach.
 - One comment asked for clarification regarding the cost used as the denominator for the transportation, supply and staff training costs of 4.4 percent.

ODP’s response: The Medically Complex Life Sharing service will be available to individuals of any age who meet the criteria, including having a Needs Group 4. The Needs Group is based on needs levels derived from the individual’s Supports Intensity Scale. The rate assumption logs have been updated with most current data. The rates for Medically Complex Life Sharing services will be implemented as proposed.

- Three comments were received on the Family Medical Support Assistance rates.
 - One comment was in support of the addition of new rates for the Family Medical Support Assistance service.
 - One comment recommended a DSP hourly range of \$20-27 due to the credentialing requirement and the workforce crisis.
 - One comment asserted that the billable hours per day are overstated by at least 0.5.

ODP’s response: The rates for Family Medical Support Assistance services will be implemented as proposed.

- Eight comments were received regarding the Community Participation Support (CPS) service.
 - One comment supported the establishment of rates for Remote CPS.
 - Two comments said the proposed rates for Remote CPS are too low to make the service viable.

- One comment proposed eliminating the Fee Schedule Rates for Remote CPS as there are already too many service codes and revisions are costly and time consuming.
- One comment expressed concerns that rate assumption logs for Remote CPS are based on outdated data and do not use a market-based approach.
- One comment asked about the 30/70 full-time/part-time staff split assumption for Remote CPS. The comment said their agency has 96 percent full-time staff providing CPS, and the proposed rates would cover only 66 percent of their employee-related expenses.
- One comment asked that ODP develop only one rate for all components of CPS, stating that community participation could be documented in service notes.
- One comment expressed concern about the upper end of staffing ratios in regulatory requirements.

ODP's response: Using a market-based approach, ODP reviewed data and rate assumptions for all direct services that can be rendered using remote technology and found that changes were needed to implement Remote CPS. The rate assumption logs have been updated with most current data including a change to the full-time/part-time staff split assumptions. The rates for Remote CPS services will be implemented as proposed.

- One comment suggested that the rate paid for Enhanced Communication should be increased to reflect the scarce number of individuals that have the high degree of skill needed to render the service.

ODP's response: The Enhanced Communication rates for services will be implemented as proposed.

- Two comments were received on the Transition to Independent Living payment.
 - One comment said that the payment might not be sufficient enough to cover all costs and financial impact and asked that an exception process be included.
 - One comment asked that ODP provides details on the assumptions for the new Transition to Independent Living payment.

ODP's response: The Transition to Independent Living payments will be implemented as proposed.

- One comment recommended that ODP allow "rounding" in the definition of a 15-minute unit.

ODP's response: The full 15 minutes of service does not need to be provided consecutively but must be rendered during the same dates of service indicated on the claim for the same participant, same 13-digit MPI and same service. No changes were made to unit billing policy at this time.

- One comment asked if there would be an enhanced rate for the Homemaker/Chore service for individuals with a complex medical condition that require specialized cleaning of medical equipment and disinfecting of the home.

ODP's response: After analyzing the rate assumptions for Homemaker/Chore services, ODP determined that cleaning medical equipment and disinfecting the home did not necessitate a different rate.

The following 6 comments were received that were outside the scope of the public notice and are thus not addressed in this summary:

- One comment indicated that the rates for employment services are too low to cover the cost of training and mentoring and asked that the rates for employment services across all four ODP waivers be aligned.
- One comment suggested that due to the increased responsibilities of staff providing the Companion service, the rate should be increased.
- One comment said that the rate paid to agencies acting as an Organized Health Care Delivery System (OHCDS) is not sufficient enough to cover the cost of performing the work.
- One comment suggested that rates for Nursing services should match educational differences and job requirements.
- One comment asked that rates for services such as nursing and behavioral services in residential settings be billed discretely to better track and monitor how much and if services are being delivered.
- One comment implored ODP to raise rates for the Adult Autism Waiver.