

## **Summary of Public Comments Received and ODP Responses Regarding the Proposed Rate Setting Methodology and Proposed Fee Schedule Public Notices**

The Department published two public notices at 47 Pa.B 4905 (Saturday August 19, 2017). One public notice provided the proposed rate setting methodology while the second provided the proposed fee schedule rates effective July 1, 2017. The Department received comments on these two notices from 33 people and organizations. As a result of the comments received, the Department made changes to Agency with Choice/ Financial Management Services (AWC/FMS) rates for In-Home and Community Support and Respite (15-minute and Day) services effective July 1, 2017.

### **Rate-Setting Methodology for Consolidated and Person/Family Directed Support Waiver- and Base-Funded Services for Individuals Participating in the Office of Developmental Programs Service System**

ODP received written comments from 11 individuals and organizations regarding the cost-based rate setting methodology public notice. The following is a general summary of comments received and ODP's responses to those comments.

- 8 comments were received regarding the need to include a Cost-Of-Living Adjustment (COLA) or Market Basket index adjustment to the cost-based rates. In addition, commenters indicated that the proposed rates do not support living wage/local mandatory minimum wage.

ODP Response: The Prospective Payment System (PPS) cost-based methodology has a two year lag which has been a concern expressed by stakeholders prior to the publication of the proposed notice. ODP is transitioning away from the PPS cost-based methodology effective January 1, 2018 for residential habilitation and life sharing services and anticipates transitioning away from the PPS cost-based methodology for transportation (per trip) effective July 1, 2018. These services will be transitioned to fee schedule rates which use a market-based approach as outlined in the applicable waivers and the proposed fee schedule public notice, so that payments are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that services are available to at least the extent that such services are available to the general population in the geographic area.

- 3 comments were received expressing concerns about the process used for the Individual Support Plan (ISP) outlier review.

ODP Response: The concerns expressed in these comments appeared to be provider specific not necessarily about the proposed methodology. ODP will address the provider specific concerns with the provider.

- 1 comment was received opposing the use of statewide rates for the cost-based methodology.

ODP Response: The cost-based rates discussed in the proposed notice are provider specific and are not statewide rates.

- 3 comments were received regarding not having the vacancy exception process included in the public notice.

ODP Response: ODP is discontinuing the vacancy exception process effective January 1, 2018 so the process was not included in the draft rate methodology. In response to historical provider concerns about exceptional vacancies, ODP has modified policies on the definition of a day unit and reserved capacity.

- 1 comment was received regarding proposed rates not supporting qualified providers.

ODP Response: ODP establishes the cost-based rates so that payments are consistent with efficiency, economy and quality of care and sufficient to enlist enough providers so that services are available to at least the extent that such services are available to the general population in the geographic area. In addition, ODP ensures that all providers meet provider qualification standards through provider enrollment, provider qualification and provider monitoring protocols and processes.

- 2 comments were received regarding the delay in issuing the public notice.

ODP Response: Although the public notices were not published until August 19, 2017, ODP published assumption logs and draft fee schedule rates prior to July 1, 2017. In addition, providers received proposed rate letters dated May 26, 2017 and final rate letters were sent on July 31, 2017. Further, the Consolidated waiver application was published in draft for comment on February 17, 2017 and included a description of the cost-based rate setting methodology.

**Fee Schedule Rates and Department-Established Fees for Consolidated and Person/Family Directed Support Waivers Services, Targeted Services Management and the Community Intellectual Disability Base-Funded Program**

**ODP received written comments from 33 individuals and organizations regarding the proposed fee schedule public notice. The following is a general summary of comments received.**

- 15 comments were received supporting the need to include a COLA or Market Basket index adjustment. In addition, commenters indicated that the proposed rates do not support living wage/local mandatory minimum wage.

ODP Response: The fee schedule rate assumptions use a market-based approach so that payments are consistent with efficiency, economy and quality of care and sufficient to enlist enough providers so that services are available to at least the extent that such services are available to the general population in the geographic area.

- 32 comments were received expressing concerns about the final fee and cost components, including services such as Companion, Homemaker Chore, In Home and Community Support, Equine Therapy, Residential Habilitation (eligible and ineligible), Behavioral Support, Respite, AWC Administrative fee, and Enhanced Communication Services.

ODP Response: ODP reviewed the fees and cost components. ODP has established the fees using a market-based approach so that payments are consistent with efficiency, economy and quality of care and sufficient to enlist enough providers so that services are available to at least the extent that such services are available to the general population in the geographic area. In response to public comment, ODP did update the AWC FMS fees for In Home and Community Supports and Respite-15 min. In addition, ODP updated the PDS wage ranges for enhanced services at the 2:1 staffing ratio.

- 5 comments were received regarding the need for the fee schedule rates for participant-directed services to be the same as traditional services. Comments indicated that AWC rates are low and inadequately account for managing employers selecting the maximum wage, therefore not including sufficient funding for administrative costs.

ODP Response: Traditional services and participant-directed services are subject to different regulatory and waiver requirements. Further, AWCs receive per member per month payments for administration of the financial management service. Given these reasons, there is insufficient rationale for traditional and participant-directed services to share a fee schedule.

ODP did update the AWC FMS fees for In Home and Community Supports and Respite-15 min. In addition, ODP updated the PDS wage ranges to account for the waiver change for the provision of enhanced services at the 2:1 staffing ratios.

- 2 comments were received regarding no proposed rate being published for 55 Pa. Code Chapter 6500 (relating to Family Living Homes) respite placement.

ODP Response: The fee schedule for respite services includes multiple billing codes that are applicable; therefore, there was no need to include a life sharing specific code and rate in the fee schedule. ODP provided guidance on the appropriate billing codes for respite and life sharing in the *ISP FY17-18 Renewal FAQ Guidance*.

- 9 comments were received supporting the need for geographical rate differences.

ODP Response: ODP established fees using a market-based approach so that payments are consistent with efficiency, economy and quality of care and sufficient to enlist enough providers so that services are available to at least the extent that such services are available to the general population in the geographic area. Analysis of the data did not support multiple geographic areas at this time.

- 9 comments were received supporting the need for additional detail to be included in the public notice regarding the assumptions and the rate variance process.

ODP Response: The public notice is intended to release the final fee schedule rates and methodology only. However, the additional detail cited in these comments was also released in separate publications. ODP released the assumption logs for each service in the Consolidated and P/FDS waivers and the variance process via previous publications.

- 1 comment was received expressing concerns about individual's choice when bundling residential services.

ODP Response: Individuals have a choice of residential providers. If an individual is not satisfied with the clinical services provided by the selected residential provider, the individual may request a change in residential provider. Behavioral Support and Nursing will not be allowed as a discrete service for individuals who receive a residential service. This gives residential providers the flexibility to provide the Nursing and Behavioral Support services at staffing ratios, frequency and duration that will best meet the needs of the people they serve. This change also allows residential providers to build capacity within their organization by using Behavior Support and Nursing professionals to provide training to staff and consult about issues individuals may be experiencing in multiple houses where the provider renders services. Residential providers would also have the flexibility to determine whether to hire staff directly to provide these services or contract with a separate provider.

- 1 comment was received expressing concerns about access to services issues noting that ODP will not be able to tell when there is an issue and that providers who do not meet qualification criteria are allowed to provide services.

ODP Response: There are multiple monitoring functions within the system to address the concerns raised by this commenter. ODP has established the fees to fund services at a level consistent with efficiency, economy and quality of care and sufficient to enlist enough providers so that services are available to at least the extent that such services are available to the general population in the geographic area.

The Department can and does review the provider paid claims reports and will be able to determine if providers are no longer able to provide or have stopped providing services. ODP ensures that all provider meet ODP's provider qualification standards. ODP will not enroll qualified services for a provider in PROMISe without the submission of the DP-1059 form and the AE qualification of such services in HCSIS. Providers who fail to submit their requalification documentation will not receive payment.

- 1 comment was received requesting more information about how the budget will be appropriated each year.

ODP Response: The general assembly appropriates the budget to the Department of Human Services, including ODP, each year. Stakeholders are encouraged to discuss funding concerns with their elected representatives.

- 1 comment was received regarding a discrepancy in rate for W5967.

ODP Response: The proposed public notice contained an error for W5967. This was corrected to \$6.59 on the DHS website and is correct in the final public notice.

- 1 comment was received regarding having all Supports Intensity Scale (SIS) assessments completed by October 31, 2017, as the SIS score impacts the rate assignment.

ODP Response: ODP is continuing to work with ASCEND to complete SIS assessments as quickly as possible.

- 2 comments were received supporting the use of Additional Individualized Staffing (AIS) until new SIS assessment could be scheduled.

ODP Response: AIS is not the appropriate service to address short-term needs and is no longer available as of December 31, 2017. Supplemental Habilitation which may be provided on a short-term basis can be used for a change in need until the new SIS assessment can be completed.

- 1 comment was received supporting having anyone with 1:1 staffing needs assigned SIS group 4.

ODP Response: Automatically assigning anyone to a SIS group would compromise the validity of the independent assessment.

- 5 comments were received regarding the SIS as the assessment tool and the public notice not including any reference to ODP's adoption and application of the SIS and PA Plus.

ODP Response: The fee schedule rate methodology explains that the Department evaluates and uses various independent data sources such as a Pennsylvania-specific compensation study and expense data from prior approved cost reports, as applicable, to ensure the rates reflect the expected expenses for the delivery of services under the waivers for the major allowable cost categories listed as follows:

- The support needs of the individual,

- Staff wages,
- Staff-related expenses,
- Productivity,
- Occupancy,
- Program expenses and administration-related expenses,
- A review of approved service definitions in the waivers and determinations made about allowable cost components that reflect expenses necessary and related to the delivery of each service,
- A review of the cost of implementing Federal, State and local statutes, regulations and ordinances.

No specific data source is identified in the methodology for any of these categories. ODP did, however, release the assumption logs for residential services ([http://www.dhs.pa.gov/cs/groups/webcontent/documents/document/c\\_260452.pdf](http://www.dhs.pa.gov/cs/groups/webcontent/documents/document/c_260452.pdf)) and the use of SIS and PA Plus data is specifically described in the assumption logs.

- 1 comment was received regarding not using proposed 55 Pa. Code Chapter 6100 regulations to set rates.

ODP Response: ODP cannot use draft regulation to implement rates. Once the regulations are enacted, they will be used at the basis for the rate setting methodology. As indicated in the public notice, the Fee Schedule Rates also serve as the Department-established fees under 55 Pa. Code § 4300.115(a) (relating to Department established fees) for base-funded services managed through county programs for individuals with an intellectual disability under the Mental Health and Intellectual Disability Act of 1966 (50 P.S. §§ 4104-470); 55 Pa. Code Chapter 4300 (relating to county mental health and intellectual disability fiscal manual); and 55 Pa. Code Chapter 51 (relating to Office of Developmental Program's home and community-based services). The rate setting methodology in the proposed notice also aligns with the rate-setting methodology enumerated in Appendix I-2-a of the approved Consolidated and P/FDS waivers.

- The following 3 comments were received that were outside the scope of the public notice and are thus not addressed in this document:
  - 1 comment was received regarding individual use of funds for elective therapy (not covered by residential services).
  - 1 comment was received regarding eligibility for individuals to receive enhanced communication service for Harry M class members, including those with profound hearing loss and adding to the ineligible services.
  - 1 comment was received regarding OLTL Residential Habitation.