REHABILITATION & COMMUNITY PROVIDERS ASSOCIATION

Department of Human Services, Office of Developmental Programs
Division of Provider Assistance and Rate Setting
4th Floor, Health & Human Services Building
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RCPA is pleased to submit the following comments in regard to the proposed Fee Schedule Rates for services funded through the Consolidated, Community Living, and P/FDS waivers and base-funded program as well as department-established fees for residential ineligible services. We are grateful for the investment in ODP services that Governor Shapiro has recommended and are supporting the proposed budget in our advocacy efforts.

While the overall proposed investment in ODP services is commendable, the assumptions utilized for the basis of the various service rates are seriously flawed, and the distribution of new funding is not equitable across services. Based on the proposed rates, providers with a larger share of residential services will experience much smaller than the 12% average increase announced by Governor Shapiro. This is especially of concern due to the public message that has been widely shared by the governor and Secretary Arkoosh regarding the investment and intention to bolster the direct care staff compensation. Direct care staff are paying close attention to this message, and unfortunately the proposed distribution of the funds will not support equal treatment to DSPs across all services. Excluding enhanced services, the average licensed residential eligible rate is proposed to increase by 8.0%. In contrast, residential habilitation life sharing, supported living, and companion services have proposed increases of 15% – 23%.

The majority of ID/A waiver fee schedule rates, which were established and maintained by DHS, have been frozen since January 1, 2022. Since then, inflation as measured by the Consumer Price Index has increased by 12%. Our DSPs are one of the most critical variables in meeting the goals of *Everyday Lives*. In the Center for Healthcare Solutions ID/A Benchmark Compensation Survey from June 2023, which was referenced in ODP's implementation plan published in April 2024, it was reported that there is a DSP vacancy rate of 23%. By far, the biggest expense lines for providers consist of staffing costs – salary and benefits. The assumed waiver DSP starting base wage of $15.56 is 23.4% lower than the $19.20/hour wage floor that will become effective July 1, 2024 for State Center DSPs. The rate setting assumptions also grossly underestimate the extent of overtime needed to continue to support individuals with disabilities in the face of 23% staff vacancies and 40% staff turnover.

For CPS services, DHS assumes overtime is only 5%. DHS also incorrectly assumes that overtime is not applicable in residential services. The Center for Healthcare Solutions ID/A Survey concludes that residential overtime paid at least at time and a half averaged 20% during FY 2023. In addition to vacant positions, staff take vacation, attend trainings, sometimes they are summoned for jury duty, take military leave, or take bereavement leave following the death of a loved one. Sometimes they themselves become ill and have to take extended medical leave or even a day of sick time. These are all very justifiable reasons for an organization to incur overtime costs.

The fee schedule assumptions log notes all employees earning over $35,568 per year are classified as salary exempt and work overtime without additional compensation.

Based on job responsibilities, this treatment for DSPs is not compliant with the duties test of the Federal Fair Labor Standards Act (FLSA). Furthermore, the FLSA exempt threshold utilized is lower than the actual thresholds of $43,888 and $58,656 that will be effective on July 1, 2024 and January 1, 2025.

Since actual statewide overtime data indicates overtime rates average 20%, these flawed rate setting assumptions significantly depress funding and are in direct conflict with the requirement to establish market based rates. The annual salary used to "exempt" staff from being paid overtime does not apply to direct support professionals or front line supervisors, as they do not meet the definition of Executive, Administrative, or Professional Exemption. The following is taken directly from the PA Department of Labor website:

Examples of employees who do not qualify for these exemptions:
Bookkeeper, social worker, case manager, advocate for individuals with disabilities, secretary, help desk support specialist, inspector, medical coder, mortgage loan officer and nurse.

Since frontline residential DSPs are required to work a combination of shifts including nights, holidays, and weekends, it also does not make sense from a recruiting or retention pay practices perspective that the DHS fee schedule assumes CPS staff, who tend to work a more traditional Monday–Friday first shift schedule, earn 8% higher wages than their residential counterparts who are forced to work non-preferred shifts. In order for the rates to be market based, the residential DSP wage assumptions should be increased to an amount that is greater than the CPS wage rate. It is common practice for providers to pay residential staff $1/hour more than similarly tenured and credentialed CPS staff.

For individuals in Needs Group 5, who have independently been assessed to have the most complex support needs in the state, the rate increase is proposed to be only 5.0%. Maintaining the 24/7 health and safety of these vulnerable individuals requires the most well trained and highly skilled staff. The job responsibilities of the staff supporting these individuals are complex and demanding. In the current competitive job market, absent a substantial funding investment to recruit and retain these staff, turnover and vacancies in these positions continue to rise. The lives of high-risk individuals are dependent upon 24/7 in-person support 365 days per year. High levels of vacancies, turnover, and insufficient funding are of great concern. We urge ODP to ensure that the proposed rates for every service offset inflation so that all DSPs can be compensated accordingly.

DHS also incorrectly assumes 25% of the workforce is part time, working less than 30 hours per week. In 2017 and prior, the rate setting assumptions used 20% for part time classification. The impact of increasing the part time DSP classification further understates actual overtime and benefit costs, assuming these costs are not incurred by 25% of the workforce.

The majority of our members do provide benefits (usually a reduced amount) to part time staff, and in fact are required to provide certain benefits to employees who work 30 hours a week (in essence considered full time – employees do not need to work 40 hours in order to be eligible for benefits). Further, providers are mandated to provide sick leave for part time staff since the pandemic. A provider's flexibility in this area is limited by the Affordable Care Act and the provisions for health insurance to remain affordable — which remains a challenge with entry level positions, so passing the additional costs on to employees is not an option.

The proposed assumption for employee health benefits of $638/month has increased by only $21 or 3.4% as compared to the cost used by ODP in the 2017 rate setting assumptions log. In contrast to the assumed 3.4% increase, the 2023 Annual Kaiser Family Foundation Employer Health Benefits Survey finds that average employer paid health benefits have **increased by 26%** since 2017. In September 2023, Mercer published a National Survey of Employer-Sponsored Health Plans finding employer-sponsored health insurance cost increased by 24.9% since 2017. Mercer's report notes last year's high inflation and labor shortages in the health care industry have pushed health care costs higher, contributing to higher health benefit costs, which are projected to increase by an additional 5.4% in 2024.

It is notable that Mercer, who projects a 30.3% benefit cost increase since 2017, is the same actuary ODP utilized in developing the current and proposed fee schedule rates, which suggest the health benefit cost increase is a mere 3.4% during this period.

Although the rate setting assumptions are not transparent or sufficiently detailed, based on the data presented, it appears employee benefits do not include dental or vision coverage and that the cost of any portion of dependent health care coverage is also excluded. Given that many members of our workforce are women-headed households with dependents, this is unsustainable for employers. We must offer our employees comprehensive insurance for their dependents. In stark contrast, the health benefit cost of the state equivalent is **97% higher** than the funding for the HCBS equivalent.

The assumptions for training costs and staff training hours are also grossly insufficient. One day onboarding for residential staff does not meet the regulatory standards providers are required to meet. A good quality orientation takes 3–5 days, and that does NOT include approximately two weeks of shadowing in the home(s) that they will be working in. It also does not include the mandatory Medication Administration – which in most homes must be completed as soon after orientation as possible, and definitely before the staff can be left alone on a shift. The Med Admin training takes 2 to 3 full days. Additionally, there are other necessary trainings, such as person-centered training on 3-4 ISPs and behavior support plans. Please refer to the training requirements direct care staff must meet before they can work alone with an individual as outlined in ODP regulations. A more realistic assumption is 15 days needed to fully meet the training requirements mandated by the regulations.

Overall, individuals who require 24/7 licensed residential life sustaining supports have greater needs than the average individual enrolled in a CPS program. Under-investing in training for residential DSPs discriminates against individuals with higher acuity and suggests DHS does not prioritize a highly trained workforce in the service line with the greatest risk for abuse and neglect of vulnerable individuals, and is incongruent with the standards proposed for performance-based contracting.

The rates for services such as CPS, In Home and Community Supports, and Companion, that promote community inclusion and/or living as independently as possible in one's home do not consider important factors such as overall utilization of the service, total DSP compensation relative to billable versus non-billable time, or the inability to round to the nearest 15-minute unit like DHS allows for OLTL services. Not considering these factors creates a disincentive for providers to strive towards a more community-based model and instead promotes facility-based, congregate support where these same factors are minimized if not eliminated entirely.

Additionally, IHCS 1:1 rates are historically lower than the CPS 1:1 community rate. The service types are comparable and overhead the same as CPS community. Why is the CPS 1:1 rate not proportionate to the CPS 1:2 or 1:3 rate? The margins are much greater if you enroll individuals in small groups, which means agencies are incentivized not to enroll people with the most complex needs.

In non-residential rate assumptions, "Annual Days of Service" is 260 days... 52 weeks x 5 days per week (Mon–Fri) = 260 days. This is inaccurate, since it does not consider federal and state holidays that fall between Monday through Friday, or any other reason the program may be closed.

Administrative costs are assumed to be 10%. A more reasonable estimate is 13–14%. In an already highly regulated system, providers have been faced with increasing administrative responsibilities in the past 3–4 years with Incident Management requirements, increased need for Certified Investigators, Incident Management Representatives, Human Rights Teams, completion of HRSTs and the follow-up included, Quality Improvement activities including the completion of an annual self-assessment, and development of a QA&I plan. Performance-Based Contracting calls for management staff who have earned the Quality Management certification. Investments need to be made in technology, data tracking, hiring additional clinical staff, implementing a credentialing program, and providing enhanced training to help meet the needs of individuals with medical or behavioral complexities. All of these requirements will carry administrative costs that will surpass a 10% portion of provider operating expenses. Additionally, while we all recognize the need to invest in DSP staff and frontline supervisor workforce, we cannot ignore the fact that we must invest dollars into the executive and senior leadership roles in our system if we are to attract candidates with the skills and leadership qualities needed to successfully run a business.

DHS improperly assumes that directors are not needed in residential services. Leaving this critical position unfunded is inconsistent with other services and does not comply with §6100.571(b). Does this omission assume all residential supervisors and managers report directly to the CEO?

In residential services the rate setting vacancy factor used is 97%. This means if in the pursuit of an everyday life, an individual chooses to visit family, friends, go to camp or on vacation for 11 days or more per year, then providers are not reimbursed for the residential costs, which in large part remain unchanged. The inadequate vacancy factor also becomes an issue when an individual chooses to move to another home, provider, or if they pass away. Filling an unexpected vacancy requires careful planning, screening, and visits to ensure an appropriate match is identified. Completing a discharge and new admission in 11 days is an unrealistic expectation. Although there is a process for changing approved program capacity for certain circumstances exceeding 30 days, there is still at least a 19-day reimbursement loss associated with each transition.

As the governor's budget is considered for action by the General Assembly, we recognize that adoption may be delayed. If this is the case, it will be imperative that the rate increases be retroactive to the beginning of the fiscal year.

Thank you for this opportunity to provide feedback regarding the proposed rates.

Sincerely,

Carol J Ferenz

Carol Ferenz
Director, IDD Division