

Summary of Public Comments Received and ODP Responses Regarding the Proposed Department-Established Fees and Fee Schedule Rates for Services Funded Through ODP's Consolidated, Community Living and P/FDS Waivers and Base-funding

The Department published public notice at 52 Pa.B 102 (January 1, 2022) which included the proposed department-established fees and fee schedule rates effective in 2022. The Department received comments on the notice from 134 people and organizations.

After reviewing the comments on the proposed rates, the Department determined that an increase to the Fee Schedule Rates for the Agency With Choice monthly administrative fee from \$285.28 to \$311.68 was necessary to cover staff wages and the costs of implementing participant directed services in accordance with waiver requirements. The following is a general summary of comments received and the Office of Developmental Programs' (ODP) responses to those comments.

Rate-Setting Methodology for the Proposed Department-Established Fees and Fee Schedule Rates for Services Funded Through ODP's Waivers and Base-funding

- 13 comments were received regarding the need for changes to assumption rates for staffing ratios. Comments indicated FT/PT, Director/Employee, and nonexempt/exempt staff ratios assumptions were not aligned with provider experiences.

ODP Response: The proposed Fee Schedule Rates and Department-Established Fees were developed using a market-based approach. ODP used information collected from a provider survey released in September 2021 to develop staffing ratio assumptions. The staffing ratio assumptions will be implemented as proposed.

- 17 comments were received supporting the need to increase assumption rates for Employee-Related Expenses. In addition, comments indicated the support for the inclusion of Juneteenth as a paid holiday and increasing retirement contribution.

ODP Response: The fee schedule rate assumptions use a market-based approach so that payments account for adequate Employee-Related Expenses. The assumption rates for Employee-Related Expenses and the number or dates of paid holidays will be implemented as proposed.

- 2 comments were received regarding an error in the Non-Residential Services wage range for Director and concern that Director is not included in the Residential rate assumption.

ODP Response: The proposed Non-Residential Services wage range for Director is correctly represented at \$40.44-\$40.44. The Residential assumptions include wages for direct service professionals, supervisors, residential managers, staff trainers, nurses, and other practitioners. Any additional positions would be covered under the Administration assumption. No changes were made as a result of these comments.

- 7 comments were received regarding the rate assumption of the residential vacancy factor is higher than rates experienced.

ODP Response: The residential vacancy factor was developed based on data collected by ODP. The residential vacancy factor will be implemented as proposed.

- 33 comments were received supporting an increase to the assumptions for program and administrative costs. Additionally, comments indicated administrative costs have risen from inflation, compliance and mandated training requirements, technology, billing/accounting, and the need for additional staffing to perform expanded tasks.

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 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.

The Fee Schedule Rates for the Agency With Choice monthly administrative fee increased \$285.28 to \$311.68 to cover staff wages and the costs of implementing participant-directed services in accordance with federal and state waiver requirements.

- 72 comments were received regarding the need to include a Cost-Of-Living Adjustment (COLA) or market-based index (inflationary plus catch-up modifier) adjustment. In addition, commenters indicated the proposed assumptions will not support recruitment, living wage, local mandatory minimum wages, and Nurse wages.

ODP Response: The proposed Fee Schedule Rate assumptions use a market-based approach so that payments account for adequate staff wages. 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.

- 4 comments were received opposing the use of a \$35,568 annual salary cap to calculate Overtime rate assumptions. Commenters further expressed concern that the assumptions related to OT did not meet the requirements of the FLSA test.

ODP Response: The staffing wage assumptions and overtime adjustments will be implemented as proposed.

- 1 comment was received supporting the inclusion of a full-time nurse to employee assumption for In-Home and Community Services.

ODP Response: The employee assumptions for In-Home and Community Services will be implemented as proposed.

- 16 comments were received regarding the need to adjust the assumptions of Productivity to account for unavoidable nonbillable paid time, such as that for training, compliance, absentee factor, and travel between locations to serve individuals. Further, a commenter expressed concern that there was no absentee factor in the In-Home and Community Services assumption logs.

ODP Response: The productivity assumption does account for nonbillable paid time. The Productivity rate assumptions will be implemented as proposed.

- 2 comments were received regarding the need to include recruiting costs such as hiring and signing bonuses and advertising/marketing to recruit staff in the proposed rate increases.

ODP Response: The cost assumptions will be implemented as proposed.

- 34 comments were received opposing the reduction of the healthcare insurance assumption rate. In addition, commenters indicated the actual healthcare costs had increased and are projected to continue increasing annually. Commenters further expressed the need for healthcare costs to be covered for staff and supported healthcare insurance for part-time staff.

ODP Response: The healthcare insurance rate assumptions are set from market-based research inclusive of the Bureau of Labor Statistics data from March 2021, which indicated higher health insurance cost than the more recent September 2021 release. Additionally, the Department used Pennsylvania data from the Kaiser Family Foundation. The assumption of healthcare insurance costs for full-time staff only is compliant with laws on staff healthcare insurance coverage. The BLS data can be found here:

https://www.bls.gov/news.release/archives/ecec_06172021.pdf.

- 3 comments were received supporting rounding for 15-minute units. A commenter further supported applying the same policy as the Office of Long-Term Living for comparable services and to Electronically Verified Visit (EVV) units.

ODP 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.

- 3 comments were received regarding the need to include occupancy costs for Community Participation Support (CPS) services rendered in the Community and Job Coaching.

ODP Response: The proposed rates include the expected expenses for the delivery of services under the waivers for the major allowable cost categories including occupancy. The CPS and Job Coaching rates will be implemented as proposed.

- 15 comments were received expressing the need for an annual rate review and increase instead of every 3 years.

ODP Response: Pursuant to 55 Pa. Code § 6100.571 (relating to fee schedule rates), which was effective October 5, 2019, the Department is required to update the data used in establishing the fee schedule rates at least every 3 years. The Department has reviewed and revised its rates for services funded through the Consolidated, Community Living, P/FDS, and Adult Autism Waivers and the Base-funded program to comply with this requirement.

- 4 comments were received regarding the need for transparency and compliance with 55 Pa. Code Chapter 6100 regulations to set rates. Comments further indicated a desire to see specific sources of data.

ODP Response: In developing the proposed Fee Schedule Rates and Department-Established fees for each service, the Department evaluated and used various independent data sources, such as a Commonwealth-specific compensation study, to ensure the rates reflect the expected expenses for the delivery of the service under the Consolidated, Community Living and P/FDS Waivers. As required by 55 Pa. Code § 6100.571(b), the Department examined and used data relating to the required factors to establish the Fee Schedule Rates.

ODP did release the assumption logs applicable to the proposed rate increases (<https://www.dhs.pa.gov/providers/Providers/Pages/2022-Proposed-Rates-for-Consolidated-Community-Living-PFDS-Waivers.aspx>). Included with these assumptions are references and links to the specific data sources used in the rate development.

- 7 comments were received supporting the need to increase assumptions for staff wages to be equitable to staff in the same or similar roles at state centers.

ODP Response: ODP does not set provider staff wages. The wage ranges, as reflected in the assumptions, include BLS job classifications and data which would encompass comparable positions both for waiver providers and state center staff. Further, the proposed staff wage assumptions include equivalency to midpoint regarding state center staff wages.

- 1 comment was received regarding the need to increase the Residential reimbursement rate to accommodate the rate setting assumption for residential wage increase.

ODP Response: The Department evaluates and uses various independent data sources to ensure the rates reflect the expected expenses for the delivery of services under the waivers for the major allowable cost categories. The Residential reimbursement rate will be implemented as proposed.

Department-Established Fees and Fee Schedule Rates for Services Funded Through ODP's Waivers and Base-funding

- 27 comments were received in support of the proposed fees and fee schedule rates for services funded through ODP's Waivers and Base Funding. Additionally, a comment was received supporting proposed rates for the Housing Transition and Tenancy Sustaining Service.

ODP Response: ODP received the general approval comments submitted and are appreciative of the support.

- 2 comments were received supporting an increase for mileage caps for Job Coaches.

ODP Response: The mileage cap component includes consideration for the average mileage seen for staff travel distance. Ranges include consideration for mileage costs and non-billable travel time. The mileage caps will be implemented as proposed.

- 11 comments were received regarding the retroactive start date of January 1, 2022. Additionally, commenters expressed support for July 1, 2021 and April 1, 2021 retroactive start dates.

ODP Response: The fee schedule rates for services will be effective on January 1, 2022, with the exception of fee schedule rates paid to the Agency with Choice Financial Management Services organization which will be effective on March 1, 2022.

- 6 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.

- 22 comments were received expressing concerns about the fee and cost components, including services such as Companion, Homemaker Chore, In Home and Community Support, Equine Therapy, Music 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. The Department established the Fee Schedule Rates and Department-Established Fees to fund services at a level sufficient to ensure access, encourage provider participation, and promote provider choice, while at the same time ensuring cost effectiveness and fiscal accountability. The Department determined that an increase to the Fee Schedule Rates for the Agency With Choice monthly administrative fee from \$285.28 to \$311.68 was necessary to cover staff wages and the costs of implementing participant directed services in accordance with federal and state waiver requirements.

- 2 comments were received expressing concern about rate increases resulting in reaching the Community Living Waiver (CLW) or Person/Family Directed Support (P/FDS) Waiver annual cap limits earlier, causing a reduced number of hours of support.

ODP Response: The current limit of \$70,000 per person per fiscal year for CLW services will be increased to \$85,000. The current limit of \$33,000 per person per fiscal year for P/FDS Waiver services will be increased to \$41,000. The increases will ensure that the changes to the Fee Schedule Rates do not result in a reduction or loss of Waiver services for individuals.

- 1 comment was received regarding the \$33,000 to \$41,000 fee increase being applicable to Respite, In-Home and Community Supports, and Companion Care Services.

ODP Response: No additional changes were made to fee caps at this time.

- 2 comments were received regarding updates to County Base-Funded Services to match finalized ODP rates for providers/counties. In addition, a commenter expressed concern if their county would receive an increase in Base Funding Allocations for FY 21/22 and onward to offset the proposed rate increases.

ODP Response: ODP is reviewing County Base-Funded Services rates to ascertain current and future needs for Base Funding Allocation adjustments.

- 1 comment was received regarding the need for an enhanced rate for Supports Coordination services.

ODP Response: The rates for Supports Coordination services will be implemented as proposed.

- 9 comments were received regarding the proposed rates being too low to sustain operational costs to existing providers or to attract new qualified providers. Additionally, commenters expressed concern the rates would not attract therapy specialists as employees or as providers.

ODP Response: The proposed Fee Schedule Rates and Department-Established Fees were developed using a market-based approach. The process for the development of the Fee Schedule Rates and Department-Established Fees included a review of the waiver service definitions and a determination of allowable cost components which reflected costs that are reasonable, necessary, and related to the service, as defined in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (OMB Circular Uniform Guidance, December 26, 2014). The rates will be implemented as proposed.

- 9 comments were received regarding the need to adjust the mileage reimbursement rate to match the 2022 IRS mileage reimbursement rate.

ODP Response: The IRS mileage reimbursement rate in effect at the time of rate development was appropriately utilized.

- 1 comment was received regarding the effect the proposed rate increases would have on calculating and processing the Needs Exception Allowance (NEA) if the proposed rates are higher.

ODP Response: ODP is aware of this concern and is currently reviewing current NEAs to determine whether adjustments are necessary.

- 1 comment was received regarding inclusion of Hazard Pay.

ODP Response: ODP reviewed the fees and cost components. Analysis of the data did not support additional modification to the proposed rates at this time.

- 1 comment was received expressing the need to communicate the release date for the confirmed 2022 fee schedule. The commenter also noted that solid links to fee schedules would be helpful.

ODP Response: ODP publishes the final rates in the *Pennsylvania Bulletin*. The rate load details and instructions will be published in upcoming communications.

- 4 comments were received regarding the proposed CPS rates being lower than the COVID-19 temporary rates.

ODP Response: To determine the temporary CPS fee schedule rates, the Department decreased the productivity and vacancy assumptions due to individuals being absent from services as a result of the COVID-19 pandemic. Once the federal COVID-19 public health emergency expires, ODP expects productivity assumptions to increase as indicated in the proposed assumptions. This is supported by changes being made to the waivers to ensure providers continue to have increased flexibility in how CPS services are rendered.

- 1 comment was received regarding Residential Ineligible rates starting July 1, 2022.

ODP Response: In accordance with the ODP Public Notice, the start date of the Residential Ineligible rates will be July 1, 2022.

- 22 comments were received regarding the need for higher, equitable rate increases for Supported Employment, Facility-based CPS, and Life-Sustaining Residential Habilitation to align with other proposed rate increases. Additionally, comments indicated a higher Supported Employment proposed rate would indicate more commitment to employment initiatives.

ODP Response: The Department established the Fee Schedule Rates and Department-Established Fees to fund services at a level sufficient to ensure access, encourage provider participation, and promote provider choice, while at the same time ensuring cost effectiveness and fiscal accountability. The rates for these services will be implemented as proposed.

- 5 comments were received regarding the processes and timing for the rate load and retroactive payment adjustments.

ODP Response: The Final Fee Schedule Rates with retroactive effective dates will be loaded into HCSIS soon. Providers should continue to bill the current rates. For Consolidated, Community Living and P/FDS Waivers, units billed between January 1, 2022 and the date that rates are loaded in HCSIS will be reconciled through a gross adjustment. Base-funded services will not be reconciled through a gross adjustment. ODP will release additional guidance about any other applicable activities that need to be completed when rates are loaded into HCSIS.

- 4 comments were received expressing the need for fee schedules and schedule log documents to be less complex and include current rates for comparison to be more accessible to the Intellectual Disabilities/Autism community and families.

ODP Response: The public notice is intended to release the proposed fee schedule rates and methodology in a clear, accurate, and thorough format for review. ODP fee schedule and schedule log documents are presented in the least complexity possible while maintaining critical information essential for the public to review. At this time, ODP does not plan to include additional information for comparison.

- 1 comment was received expressing the need for equitable rates for S8940 and G0176.

ODP Response: ODP reviewed the fees and cost components. Analysis of the data did not support additional increase to match the rates at this time.

The following 26 comments were received that were outside the scope of the public notice and are thus not addressed in this bulletin:

- 1 comment was received regarding doubling the units per year for the Music Therapy allotment (208 vs 104 units).
- 1 comment was received regarding mandatory COVID-19 vaccination and testing.
- 3 comments were received expressing the need to increase Zone-based Transportation rates.
- 4 comments were received expressing the need for the rate increases for Vendor Fiscal/ Employer Agent (VF/EA) financial management model.
- 1 comment was received regarding the date of emergency for CPS rates.
- 1 comment was received supporting the need for the Participant-Directed Services (PDS) model to have reimbursement for workers paid through a Financial Management Services (FMS) organization.
- 1 comment was received regarding the need for families to have the same afforded protections of enrolled providers and afforded budget authority.
- 1 comment was received expressing the need for each therapy to have separate allotted units and to not be combined.
- 1 comment was received regarding the need for contracted agencies offer the same maximum of hours for supports for people regardless of county.
- 1 comment was received supporting the publication of a bulletin to inform government entities and anyone working under the waivers that Medicaid fraud is a civil matter.
- 2 comments were received supporting the removal of the requirement of FBI fingerprints for out-of-state applicants.

- 4 comments were received supporting aligning rates across ID/A and AAW waivers.
- 1 comment was received supporting waiving prudent pay for providers.
- 1 comment was received supporting the release of a separate bulletin for services for Family Medical Support Assistance and the Nursing Oversight Program and clearly identifying if these services used two (2) different codes.
- 2 comments were received in support of less restrictive state qualifications for care worker applicants.
- 1 comment was received regarding provider accountability for nonpayment or late payment.
- 1 comment was received regarding residential provider determinations for behavior and communication support resulting in elimination of individual choice.
- 1 comment expressed concern about the elimination of vocational workshops as an employment choice.