

STATE OF COLORADO



Colorado Department of Human Services

people who help people

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Bill Ritter, Jr.
Governor

Karen L. Beye
Executive Director

June 17, 2008

Dear Stakeholders:

Many of you have taken the time to write me about your concerns regarding the proposed rates and new support levels for the HCB-DD (Comprehensive Services) waiver. Thank you for that effort. Since there are several common themes to the letters I have received, I am writing a general response and sending it to our stakeholder address list. We will also be posting this response on our DDD website. In the future, we will continue to use the FAQ process for addressing questions regarding this and other aspects of the Medicaid waiver changes. So, please watch that site for further updates.

1. HCB-DD waiver – New Rates and Support Levels - Loss of Providers

Question/Concern: We are concerned that providers who are facing significant losses in projected revenues will be unable to accommodate that change by FY 2010, and may go out of business.

Response: The State does not want the new rates and/or support levels to undermine the stability or availability of providers on whom consumers rely for their services. We recognize that there may be adjustments that will be needed to the support level algorithm and/or the new rate model. *We are open to exploring these concerns over the next year while the hold harmless funding is still available, and whether improvements, that will reduce losses that some providers are facing, may be implemented by FY 2010.*

However, it is not our intent to assure that no rates will be lower than previous or that no consumer will be assessed in a lower support level than previously. A shift in revenues is unavoidable with a change to standardized rates and consumer support levels. *Rates will only be reconsidered in light of additional information that supports changes to underlying cost assumptions to assure that rates are sufficient to cover bona fide operating costs, not due to concerns regarding changes in profit margins.* Likewise, the support level algorithm work will concentrate on identifying individuals who are misplaced relative to other consumers and their needs.

Note, that to be successful, we will need your full cooperation regarding additional data collection efforts to document and develop recommended changes. Also, any

recommendations for changes will require HCPF approval, as well as that of CMS if it changes what was presented in the waiver amendment application.

In the meantime, the hold harmless funds should provide stability and transition time, in order for CCBs and other providers to examine their operations in relationship to these new rates and support levels for the following year.

2. HCB-DD waiver – Residential Rates – Variable by Setting –

Question/Concern: Can you set the same reimbursement rate for all three residential settings (Group home, Personal Care Alternatives and Host Homes) in FY09 as is currently the case? Otherwise, rates might result in an incentive to move from host home settings to group homes, given that group home rates are higher than host homes and PCAs.

Response: No. The reason the new rate model proposes different residential rates by settings is that the underlying cost factors related to those three settings are not equal. The rate model attempts to create a more 'level playing field' by recognizing the underlying cost differences of those three settings and by incorporating a similar overhead percentage for all residential settings, such that the consumer and their family would be able to select the setting they prefer, and that the rates would be equally adequate for those settings based on average cost components by level.

However, it is possible that the underlying costs related to the three settings are not correctly reflected. Therefore, DDD will work with CCBs and providers to collect further data on the cost factors over the next year, while the hold harmless is in place. *Then, if the data substantiates the need for changes to values within the rate model factors, we would submit recommendations to HCPF for changes to rates for FY 2010, prior to the end of the hold harmless.* Of course, it will be critical to have cooperation from CCBs and service providers to collect data that would be needed to document any revisions.

3. HCB-DD waiver – Residential Rates – Host Home Rates

Question/Concern: Why are host home rates lower than other models and can host home rates be increased? We believe the proposed host home rates are too low (8 to 17% lower than the PCA rates for individuals in the same support levels). This results in a drastic decrease in rates for host homes and will destabilize current host home providers and make it harder to recruit new host home providers. While direct host home providers do not pay taxes, they must dedicate a lot of time for someone in their home most of the day and should be compensated for that sacrifice.

Response:

- a. Calculation of the Host Home Rates - The new rate model develops rates based on underlying cost factors, including overhead factors. In the case of Host Homes, rates are based on the PCA rates with the staff benefit factor (1.24) removed (since they are not staffed) and then replaced with a related factor (1.15) since host home direct providers have costs such as liability and health insurance. Then, for levels 4-6, a further reduction is made related to the fact that host home direct providers do not have to pay taxes on their host home income.
 - i. Comparison of FY 09 Host Home Rates to FY09 PCA rates – Yes, as you noted, the proposed new FY09 Host Home rate will be between 8 to 17% lower than the

proposed FY09 PCA rates, based on the differences in those two underlying cost factors (benefits and tax exemption). Both settings do have the same overhead factors included.

- ii. Comparison of Proposed FY09 Host Home Rates to FY08 Interim Rates – At some support levels, the host home rate will be higher in FY09 than the current reimbursement rate, for individuals in the same support level. In other cases it will be lower. For example, the proposed Host Home rates will be 8 to 30% higher for persons in Level 1, and will be lower for Level 6 by 1%, and will be lower for persons in Level 3-5 by 13% to 20%. (Also, see response to question #10, since changes in consumer support levels will also affect host home reimbursements.)
- b. Can Host Home Rates Be Increased? Host Home rates can only be increased if the underlying cost factors in the rate model are incorrect. *Therefore, DDD will investigate the concern that the new host home rates do not adequately reflect the actual costs of purchasing host home services and reasonable overhead. In this regard, DDD will be requesting providers (and CCBs) to submit data that will answer this question, including audit reports for host home agencies, host home sub-contracts, and lists of rates (by consumer) paid to the direct host home providers. If this documentation justifies it, DDD will develop recommendations to HCPF for future rates changes to host homes.* (Also, see response to question #10, since changes in consumer support levels will also affect host home reimbursements.)

4. HCB-DD waiver – Residential Rates – PCA Rates

Question/Concern: It is improbable that new proposed Rate Levels 1, 2, 3, and 4 will afford much in the way of financial incentives toward PCA development.

Response: Regarding Level 1 and 2, the proposed new rates for PCAs are actually 16 to 40% higher than the current rates in place for those same tiers, and that would seem to provide more incentive for new PCA development than current rates for those levels. This should also be true for level 6, where the new proposed rate for PCA is higher by 20% than the current tier 6 rate. For levels 3-5, the incentive may be less than previously, since the new proposed PCA rates range from 6% to 7% lower than the current rate.

However, the rate model does not attempt to create an incentive toward one residential setting over the other, but rather to reflect a similar overhead on top of cost components, so that consumers and families will have access to all settings. The real incentive for PCA development (or any other residential setting) should come from consumer/family choice regarding which setting is best suited to that individual's needs and preferences.

DDD does want the rates to be adequate to ensure that providers can be located to meet consumer and family preferences. As mentioned in the response under another question, DDD will collect additional data to recheck the underlying cost assumptions of the three residential settings to determine if they appear realistic.

5. HCB-DD waiver – Residential Rates – Nursing Services Component

Question/Concern: Can DDD Reconsider the decision to fold nursing services into the HCB-DD Residential Habilitation rate?

Response: No, DDD will not reconsider. As you know, nursing services was part of the residential daily rate prior to FY07 and will again be a part of that daily rate starting in FY09. (It was only billed separately for two years - FY07 and FY08.) A portion of the new proposed residential rates is based on the actual average utilization of nursing services based on FY08 billings annualized by the new support levels. It should also be noted that additional acute care nursing services continues to be available via the Home Health providers under the Medicaid State Plan for PCA and Host Homes, and will also be expanded to Group homes sometime in FY09. Additionally, the Support Levels Workgroup is reviewing the classification of persons currently receiving nursing services to determine if their new support level took sufficient nursing services into account.

6. **HCBD-DD waiver – FY09 Hold Harmless – May be Insufficient**

Question/Concern: We are concerned that the hold harmless funds appropriated for FY09 will be insufficient to cover losses. Can DDD notify the JBC that a supplemental will be needed to increase hold harmless? Insufficient transition time will result if losses for the year are not covered and this may impact the stability of service providers.

Response: *The JBC analyst has already been advised that these funds may be insufficient to cover those losses. Once the extent of losses can be more accurately projected, DDD will update the Department and the Governor's OSPB (Office of State Planning and Budgeting) on whether the hold harmless funding is or is not sufficient.* They will review and evaluate this information to decide if additional hold harmless funds (or permission to convert other existing funds from Medicaid to GF) should be requested through the regular supplemental process.

7. **HCBD-DD waiver – FY09 Hold Harmless– Estimates to Help Providers Plan**

Question/Concern: Can DDD project the gains and losses that each provider can expect for FY09 to help them plan their budgets for FY09?

Response: No, not at this time. It is our understanding that provider agencies should be able to make these projections more accurately than can DDD. Provider agencies know the rates that they currently receive for consumers, the amount of service they provide each consumer and the new proposed rates by consumer. This should allow providers to estimate any change in their revenue. DDD is currently unable to project this by provider, as we do not have information regarding the actual rendering provider in most cases (with the exception of those providers who bill directly), nor which setting each individual is in (for residential and day habilitation), nor what rate CCBs will be paying their sub-contractors. (Refer to question #8 below where we indicate that October, 2008 will be the first hold harmless calculation based on real claims data.)

8. **HCBD-DD waiver – FY09 Hold Harmless– Timely Distribution via CCBs**

Question/Concern: Can hold harmless be paid ahead of time? We are concerned about the timeliness of hold harmless payments and how that might affect our cash flow. Will hold harmless payments be distributed via CCBs to providers?

Response:

- a. **Hold harmless Paid Quarterly with Reconciliation** – Unfortunately, we cannot make estimated payments of hold harmless in advance of service delivery. The State Controller's Office has recently informed DDD that State rules and regulations do not

allow us to make estimated payments for any service, prior to service delivery. *The first payment of hold harmless will occur in October.* DDD plans to pull July service claims paid by end of August and have the CCBs organize that data by provider to net gains and losses across all consumers and services from that provider. This will be used as the basis for estimating the first quarter's losses (and DDD will check that total claims submissions through the end of September to substantiate that estimate to meet the State Controller's rules and regulations). Reconciliation will be needed by the end of the year, since denied claims for services delivered in earlier periods may be later paid and/or later dropped/corrected. The payments will be made quarterly, due to the workload involved in calculating this information.

- b. Distribution via CCBs - Yes. DDD will distribute hold harmless to providers via CCBs, since DDD does not have contracts with providers and therefore, has no ability to make payments to providers.

9. **HCBB-DD waiver – FY09 Hold Harmless– Calculation**

Question/Concern: How will hold harmless be calculated? Can the hold harmless be consumer based? Will hold harmless only be available for consumers residing with an agency for one year?

Response:

- a. Basic Calculation of Hold Harmless - Essentially, FY09 paid units and amounts by consumer and service will be compared to what those same units would have earned in FY08 to calculate the difference. Those gains and losses will be netted across all such consumers (if served by the same provider as in FY08) and services to determine if there is an overall net loss by provider. There are some added complexities due to changes in service sub-categories.
- b. Hold Harmless by Consumer – Hold harmless calculations start at the consumer level as noted above, however, the State will not pay a provider for losses related to one consumer if those losses are not above and beyond the gains they make for other consumers.
- c. Same Provider as at End of FY08 – *It is NOT the case that hold harmless will only be "based on billing only for those consumers residing with an agency for one year". We will be calculating hold harmless for any consumer that a provider was serving at the end of FY08 and who continues to be served by that same provider in FY09.*

10. **HCBB-DD waiver – Support Levels – Misplacement of Consumers**

Question/Concern: Some consumers are misplaced into support levels that do not truly reflect their relative needs. Consumer attributes such as high personal care needs, significant behavioral and medical challenges, and risk to self or others are not adequately taken into account. Additionally, the SIS tool may be unreliable and not valid for the purpose of setting support levels. There may be wide variability among service regions in its application.

Response:

- a. Refinement of the Support Level Process to Correct Misplacement of Consumers – DDD has formed a Support Level Workgroup to examine the Support Level algorithm to identify missing factors and/or threshold changes that are needed to improve the process. The current algorithm uses three factors from the Support Intensity Scale (SIS) and a

community safety risk factor from CCMS (data system). The committee will be making recommendations for additional factors from SIS and from other sources, along with possible changes to thresholds used for existing factors. While we recognize that some consumers are misplaced by the current algorithm, anecdotal evidence suggests that most consumers are appropriately placed.

A critical part of this endeavor will be CCB and provider participation in further collection of data on any new recommended factors. We must be able to estimate if new suggested factors do indeed differentiate between individuals who are correctly placed and those who are not, and how frequently such factors exist in our consumer population. Several statistical analyses will be needed to develop any recommended changes and to assess their interaction and impact on support level placement. Eventually, any agreed to changes that involve new information will require that information to be collected on all HCB-DD waiver (Comprehensive) consumers, as well as possibly on all SLS consumers.

It is our intent to have recommendations for changes by January 2009 for HCPF's review with plans for implementation in July 2010 when the hold harmless period ends. Also note, that it is possible that if many consumers shift upwards in their support levels, then rates may need to be lowered to maintain budget neutrality.

- b. SIS Reliability and Validity - Portions of the data from the Supports Intensity Scale (SIS) tool are utilized in the current algorithm for calculating consumer support levels (along with a community safety risk factor on CCMS). The fact that some consumers are being misplaced by this support level algorithm does not indicate that the SIS tool itself is unreliable or invalid. The SIS tool is a nationally recognized and standardized tool that has undergone extensive reliability and validity testing. It has also been selected by many states as a portion of their rate setting process regarding identification of consumer support levels.

While no uniform process will be perfect, we are committed to re-evaluating the Support level algorithm. As mentioned in the response to the earlier part of this question, the Support level algorithm process will be refined through the work of a Support Level Workgroup during FY09, while hold harmless funds are still available.

It is also possible that the SIS itself was incorrectly completed for some consumers, and a process has been available since March 2007 to address that issue. See the response to the following question below for more information.

11. HCB-DD waiver – Support Levels – Review/Dispute of Support Levels

Question/Concern: What processes are (or will be) in place for review when an individual's support level is perceived to be incorrect and not representative of needs or costliness? Some consumers did not get objective SIS assessments by well-trained interviewers or knowledgeable respondents. Some consumers have attributes that are not appropriately taken into account by the current algorithm used to place individuals into support levels.

Response:

Regarding review of consumer support levels, there are several approaches either in place or under development.

First, there is already a complaint process in place that was implemented March 2007. Information regarding that process was sent to CCBs and is also available on our DDD website at

http://www.cdhs.state.co.us/ddd/PDFs/Dir_SIS_Complaint_Procedure_March07.pdf

This complaint process typically would be utilized when the complainant believes that the results of the SIS interview were not accurate due to the way the instrument was administered. For example, if the SIS tool was not properly completed (unfamiliar respondents or other similar issue related to its application) Concerns that the support level algorithm itself needs change (such as other consumer characteristics that the algorithm may not be taking into account), are not within the scope of that complaint process at this time. Instead a Support Level Workgroup is investigating those issues.

Second, during FY09, for concerns that the support level algorithm itself is not accurately placing consumers, there are two processes in place based on whether or not hold harmless is available for a consumer. For consumers for whom hold harmless funds are available, individual review will not occur (except as noted above), an instead (1) hold harmless is available, and (2) the Support Level Workgroup is working to refine the algorithm for making corrections by FY 2010. However, it is recognized that there are some consumers who do not have hold harmless available, which would include (a) new enrollees for a provider and (b) new consumers from the waiting list. Therefore, DDD will be developing a review process associated with those situations, if the support level is significantly incorrect (i.e. 2 or more levels off). We will distribute that as soon as it is available.

Third, for FY 2010, the Support Level Workgroup will first (1) develop recommendations for changes to the algorithm for support levels which will be implemented in FY 2010 (if approved by DDD and HCPF) and the support levels of all consumers affected by those changes will be automatically altered and (2) next develop a new review process for implementation in FY2010 for consumers who have a unique set of characteristics that cannot be readily handled by a single uniform algorithm.

12. HCB-DD waiver – Proposed Rates – Geographic Modifiers

Question/Concern: We request that geographic modifiers for rates be considered for implementation by FY 2010. There are differences in the costliness of delivering services in different regions of the state, related to differences in wages needed to recruit and retain staff, along with other cost factors. When these are not considered, it means that rates will be effectively higher for consumers residing in some portions of the state than in other portions of the state.

Response: This issue has been considered multiple times over the past year by DDD and HCPF. While CMS guidelines do allow consideration of differences in the costs of furnishing services in different parts of the state, there are significant barriers to reflecting those differences in rates. The primary barriers include: (1) it does not exist for any other Medicaid State Plan service or waiver, (2) HCPF has indicated they would want to consider any such recommendation more globally (since the same concerns would apply to multiple State Plan services and waivers), since it could set a precedent and might could have a very large fiscal impact, (3) MMIS may

not currently be capable of accommodating such a factor, and (4) DDD's initial review of potential economic indicators (School District Cost of Living, Supported Housing, etc) identified reservations related to using each of them. Additionally, it is premature to consider a geographic modifier before other potential adjustments to the Support Levels and rates are studied.

13. HCB-DD waiver – Proposed Rates – Day Program

Question/Concern: We are concerned that proposed rates will increase congregate models and reduce supported employment choice for consumers. The “threshold” in units allocated to each individual served in day programs may force difficult decisions regarding the level of disability that we will be able to serve in a quality manner.

Response:

- a. Concern Regarding Potential Reduction of Choice in Supported Employment (SE) and More Congregate SE Models –
 - i. We are not sure of the basis for this concern, since the supported employment (SE) individual job rate is higher than the current SE individual rate. The SE group rates now are variable by consumer level with an average similar to the current SE group rate. The Day Habilitation non-facility based rates are all higher than the respective Day Habilitation facility based rates.
 - ii. One suggestion raised at a meeting indicated that it might be better to allow the service plan/PAR for an individual indicate the staffing ratio they need for their day program rather than having that tied to the individual's new Support Level. Then for day programs, the Support Level instead would only set a maximum annual amount per person for all of their day programs in combination and the rate levels would be related to staffing ratios (not consumer support levels). This might allow an individual to get a one-on-one community accessibility service, even if that individual was in a lower support level, but they would be able to afford fewer hours/units of service, since their annual maximum is lower. Let us know if this is what you were referring to re avoiding congregate models (or if not, more details regarding your concern). If so, such a potential approach could be discussed with DDD and HCPF over the next year, but it is likely that any change would require CMS approval if it impacts the rate model discussed in the waiver submission, along with HCPF's agreement.
- b. Day Program Unit Thresholds – DDD has established some thresholds that are used to screen PARs regarding generally accepted maximums on the number of annual units by type of service. These thresholds can be exceeded, but require justification from the CCB and approval by DDD. However, there will also be maximum annual caps for an individual on expenditures across all three day programs – Day habilitation (facility and non-facility based) and Supported employment (Group or individual job setting). These maximums increase as consumer levels increase. For example, the maximum for a consumer in level 1 is \$13,590. At level 6, the annual maximum is \$34,787. These maximums are sufficient to purchase 1542 hours of facility based day habilitation, or 1260 to 1433 hours of non-facility based day habilitation (depending on level), or 1146 to 1344 units of group supported employment (depending on level), or 279 to 716 one to one support on an individual job (depending on the consumer's support level), or some combination of these services. These annual expenditure caps are directly based the proposed rates for day habilitation facility times the PAR unit thresholds (divided by 4 to

convert from 15 minute units to hours). The purpose of the annual cap across day programs is to provide consumers with the flexibility to select any day program and/or combination of day program, but to still contain costs. This number of hours is considered to be fairly liberal compared to similar caps from the past, which were previously set at 1440 hours/year for facility based, and 960 hours/year for non-facility based (community participation) and supported employment. Also, note that job supports on individual placements are only paid for direct face-to-face supports and after the initial placement and training.

14. HCB-DD waiver – Proposed Rates – Placements off Waiting List

Question/Concern: We are concerned that the new proposed rates will be insufficient to enable placement of consumers off the waiting list due to incorrect support levels or inadequate rates. Also, it will be difficult for providers to develop new placements when having to deal with large budget reductions and changes to their operations.

Response: DDD recognizes that the substantial number of new waiting list resources that were appropriated for FY09 will be difficult to develop, given the effect of the new rates on providers. The hold harmless funds should significantly reduce the impact on providers. Additionally, as noted under the response to question #11 above, a process will be put in place to consider new consumers off the waiting list whose support levels are significantly different than their needs. Also, DDD hopes that the service system will make every effort to determine the needs and preferences of these new consumers and their families and to develop those services for these individuals, many of whom have been waiting a long time for this opportunity. This is important, not just to those individuals and their families, but to others on the waiting list who are waiting for future new resources, as the legislature is only likely to provide additional new resources in FY 2010 forward, if we are unable to utilize the ones provided this year.

15. HDB-DD waiver – Loss of Financial Flexibility

Question/Concern: There have been concerns raised that under the new rate setting methodology and billing system, that a provider agency will lose all financial flexibility as they will have to expend these funds strictly by person.

Response: This is not an accurate statement. The Program Approved Service Agency (PASA) will continue to be reimbursed for each day, hour, trip or unit of service provided to each consumer. As has been in the past, the agency's responsibility is to provide services to the individual in accordance with the individual's service plan. The PASA is required to do this within their revenue stream across all individuals and all services. It is the PASA's responsibility to make the business and administrative decisions necessary to efficiently operate their program within State requirements. This means that the PASA has the authority to decide what wages to pay staff, what benefit packages are offered and to negotiate rates paid to their subcontractors (i.e. host homes.) As with any standard fee for service payment system the rate is built to pay a provider based on what it may typically cost to provide services. That does not mean that all individuals who are paid at a specific level require the exact same amount. In other words some individual's services may cost more and others may cost less and it is the PASA's responsibility to manage their business. There are no State requirements that fee for service funds paid to an agency for services provided to a specific consumer be tracked back exactly to that consumer. There is a State and Federal requirement that PASA's ensure that services identified in the individual's service plan are provided.

Thank you again for communicating your concerns to me. I know we all want the best for the individuals we serve and support.

Sincerely,

A handwritten signature in black ink that reads "Sharon S. Jacksi". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Sharon Jacksi, Ph.D., Director
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Cc:

Barbara Prehmus and Amy Haight, HCPF
DDD Management Team