

RULES AND REGULATIONS

Title 55—HUMAN SERVICES

DEPARTMENT OF HUMAN SERVICES

[55 PA. CODE CHS. 51, 2380, 2390, 6100, 6200,
6400 AND 6500]

Home and Community-Based Supports and Licensing; Fee Schedule Rates; Advance Notice of Final Rulemaking

The Department of Human Services (Department) is soliciting comments on changes it is recommending to § 6100.571 (relating to fee schedule rates) as included in the proposed rulemaking published at 46 Pa.B. 7061 (November 5, 2016).

The primary goal of this rulemaking is to support individuals with an intellectual disability or autism to live in and participate in their communities and to achieve greater independence. The purpose of this advance notice of final rulemaking is to seek additional input regarding fee schedule rates to ensure that the rates are consistent with efficiency, economy and quality of care, and are sufficient to enlist enough providers so that care and services are available to individuals with an intellectual disability or autism who receive home and community-based services (HCBS). The regulations are designed to strengthen the process by which the Department establishes fee schedule rates by: providing additional detail in the factors for establishing rates; requiring the use of the listed factors in the rate setting process; and publishing the methodology in the *Pennsylvania Bulletin*, including data and data sources used, and how the factors were examined and used to establish the fee schedule rates.

This rulemaking is needed to continue the Commonwealth's eligibility for Federal financial participation in the HCBS waiver programs. See 42 CFR Part 441 (relating to services: requirements and limits applicable to specific services). This rulemaking also protects the health, safety and well-being of the individuals receiving services in individual-directed, family-based, community residential and day programs funded through the HCBS waivers, the Commonwealth's Title XIX State Plan and State-funds-only allocations.

A. Summary of the Advance Notice of Final Rulemaking Changes

The Department has continually supported and managed an active and open community participation process throughout the development of the proposed rulemaking and in its efforts to proceed to the final-form rulemaking. In particular, a regulation work group comprised of 45 persons representing a broad range of interests, experiences and ideas, including individuals, families, advocates, universities, county programs, providers and provider organizations, met for 12 days in 2015 and 2016 to advise the Department of their collective and individual concerns and suggestions in moving forward with the HCBS and licensing regulations. Additionally, during the course of the ongoing development of the final rulemaking, more than 40 meetings were held with Statewide and regional self-advocacy, advocacy, family, provider and county organizations to review and discuss specific areas of the rulemaking, including the fee schedule rate provisions. The Department values the constructive advice and the unique perspectives provided during these meetings.

The proposed rulemaking was also the subject of a 45-day comment period with a total of 345 letters received during the process. Following the close of the public comment period, meetings were convened to discuss the public comments regarding the regulatory areas that were of most concern to the public commentators. The advice of the regulation work group and the public comments received in response to the proposed rulemaking were analyzed and considered as the Department prepares the final-form rulemaking. The Department, however, seeks additional input on the provisions regarding fee schedule rates.

The draft final rulemaking regarding fee schedule rates represents the Department's revisions based on the review and consideration of comments and regulation work group discussions. The draft final rulemaking regarding fee schedule rates contains changes in several areas. These changes include the following:

Subsection (a) is revised to align with section 1902(a)(30)(A) of the Social Security Act (42 U.S.C.A. § 1396a(a)(30)(A)) and clarifies that the Department will establish fee schedule rates that are consistent with efficiency, economy and quality of care.

Subsection (b) is revised to delete "refresh" as it is not a commonly understood term for the purposes of rate setting. This subsection now clarifies that the Department will examine and use the data sources in subsection (a) to establish fee schedule rates at least every 3 years.

Subsection (c) is revised to require the Department to "examine and use" the specified factors in establishing the fee schedule rates instead of "review and consider." In subsection (c), the Department follows the Centers for Medicare & Medicaid Services' (CMS) guidance on establishing fee schedules provided in *Rate Methodology in a FFS HCBS Structure*. See <https://www.medicaid.gov/medicaid/hcbs/downloads/rate-setting-methodology.pdf>. In accordance with this CMS guidance, the calculations of the staff wages factor in educational and professional experience and licensure and certification requirements. In subsection (c)(3), staff-related expenses are expanded to specifically include benefits, training, recruitment and supervision. In subsection (c)(6) "program expenses" is deleted and clarified by replacing the term with "direct and indirect program and administration-related expenses." Subsection (c)(7) regarding geographic region is revised to require the factor to apply to the geographic location of where the HCBS is provided. In subsection (c)(8) and (9), the language reflecting a review of factors is replaced with language to clarify that the Department will examine and use factors related to the necessary costs related to the delivery of each HCBS, including parameters within the Federally-approved service definitions and other applicable Federal, State and local laws, regulations and ordinances.

Subsection (d) of the draft final rulemaking provides that the Department will publish a summary of its rate setting methodology used in subsection (a) as a notice in the *Pennsylvania Bulletin* for public review and comment. Under the draft final rulemaking, the summary will include: the data and data sources used; an explanation of the use of the factors under subsection (c) to establish the fee schedule rates; and the fee schedule rates.

Subsection (e) is deleted as unnecessary.

B. Contact Persons

For further information or to request a copy of the draft final rulemaking regarding fee schedule rates, contact Julie Mochon, Policy Director, Office of Developmental Programs, Room 502, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120.

C. Public Comments

While there is not a legal requirement to provide an opportunity to comment upon the Department's recommendations for final rulemaking, the Department believes comments on the draft final rulemaking regarding fee schedule rates would serve the public interest in this instance. The Department requests that commentators focus their comments on the fee schedule rates language that is changed from the proposed § 6100.571 only.

Written or electronic comments will be accepted. Electronic comments may be submitted to RA-odpcomment@pa.gov.

Written comments should be sent to Julie Mochon, Policy Director, Office of Developmental Programs, Room 502, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120.

Comments must be received within 30 calendar days after the date of publication of this advance notice of final rulemaking. A subject heading of the rulemaking and a return name and address must be included in each letter or transmission. Comments will not be accepted by facsimile or voice mail.

THEODORE DALLAS,
Secretary

Annex A

TITLE 55. HUMAN SERVICES

PART VIII. INTELLECTUAL DISABILITY AND AUTISM MANUAL

Subpart C. ADMINISTRATION AND FISCAL MANAGEMENT

CHAPTER 6100. SUPPORT FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR AUTISM

FEE SCHEDULE

§ 6100.571. Fee schedule rates.

(a) [Fee schedule rates will be established by the Department using a market-based approach based on current data and independent data sources.] The Department will establish fee schedule rates using a market-based approach so that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough provid-

ers so that services are available at least to the extent that such services are available to the general population in the geographic area.

(b) The Department will [refresh the market-based data used] examine and use the data sources set forth in subsection (a) to establish fee schedule rates at least every 3 years.

(c) [The market-based approach specified in subsection (a) will review and consider] In establishing the fee schedule rates in subsection (a) the Department will examine and use the following factors:

- (1) The [support] service needs of the individuals.
- (2) Staff wages including educational and professional experience and licensure and certification requirements.
- (3) Staff-related expenses including benefits, training, recruitment and supervision.
- (4) Productivity.
- (5) Occupancy.
- (6) [Program expenses] Direct and indirect program and administration-related expenses.
- (7) Geographic costs based on the location where the HCBS is provided.
- (8) [A review of] Federally-approved HCBS definitions in the waiver and determinations made about cost components that reflect necessary costs [necessary and] related to the delivery of each HCBS.

(9) [A review of the] The cost of implementing Federal, State and local [statutes] laws, regulations and ordinances.

(10) Other [criteria] factors that impact costs.

(d) The Department will publish [as a notice in the *Pennsylvania Bulletin* the factors in subsection (c) used to establish the rates and the fee schedule rates] a summary of its rate setting methodology used in subsection (a) as a notice in the *Pennsylvania Bulletin* for public review and comment. The summary shall include: the data and data sources used; an explanation of the use of the factors under subsection (c) to establish the fee schedule rates; and the fee schedule rates.

[(e) The Department will pay for fee schedule supports at the fee schedule rate determined by the Department.]

[Pa.B. Doc. No. 17-1374. Filed for public inspection August 18, 2017, 9:00 a.m.]