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14-540 #359

Adams-Moore, Denise

From: Antonia Allsman <AALLSMAN@devereux.org>
Sent: Thursday, September 14, 2017 12:28 PM
To: PW, ODPComment
Subject: Home and Community-Based Supports and Licensing; Fee Schedule Rates; Advance Notice of Final Rulemaking
Attachments: 2017.0908 PAR Comments on Advance Notice of Final Rulemaking 55 Pa. Code 6100.571.pdf

Dear Ms. Mochon,

Thank you for the opportunity to submit comments and suggestions in response to the Advance Notice of Final Rulemaking (Advance "Notice") that was published on August 19, 2017 (47 Pa.B. 4831). I fully support the submission provided by Pennsylvania Advocacy and Resources for Autism and Intellectual Disability, PAR, on September 8, 2017. A copy of the comments are attached to this email.

As a behavioral health professional who has dedicated my career to the happiness and fulfillment of people with autism and intellectual disability, I appreciate that ODP has restated its commitment to set rates consistent with efficiency, economy and quality of care and be sufficient to ensure access by eligible consumers to Waiver Program Services. As such, I want to underscore PAR's recommendation that the new regulations contain a provision that supports the application of an annual inflation adjustment to fee schedule rates. Other healthcare-related industries are afforded this opportunity, and our services are no less worthy. In fact, consistent, caring, and competent ID/A staffing, long challenged by inadequate rates, are crucial to the daily, high-quality care and services our individuals with an intellectual disability or autism deserve.

Thank you again for this opportunity, and for your daily work on behalf of tens of thousands of individuals, and their families, in the Commonwealth.

Antonia Allsman, National Director of Development
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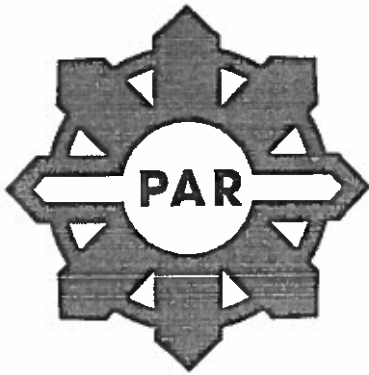
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September 8, 2017

Ms. Julie Mochon
Human Service Program Specialist Supervisor
Office of Development Programs
Department of Human Services
Room 502, Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120

Re: **Comments on Advance Notice of Final Rulemaking
55 Pa. Code 6100.571 (Fee Schedule Rates)**

Dear Ms. Mochon:

PAR is Pennsylvania's statewide association whose members provide the majority of the Commonwealth's residential and non-residential services and supports to over 50,000 individuals with an intellectual disability or autism. On behalf of our members, PAR is pleased to submit comments and suggestions in response to the Advance Notice of Final Rulemaking ("Advance "Notice") that was published on August 19, 2017 (47 Pa.B. 4831). The Advance Notice addresses how ODP proposes to calculate and adopt the fees to be paid to providers of home and community based services ("HCBS") under the recently renewed Consolidated and Person/Family Directed Support Waivers ("Waivers"). PAR appreciates ODP's willingness to engage in continued discussions with the individuals and organizations that will be affected by the proposed HCBS regulations.

We present our comments to ODP's Advance Notice of Final Rulemaking below:

Discussion: ODP has conducted an active and open community participation process in its commendable effort to solicit essential public input in the formulation of these system altering regulations published in Pennsylvania Bulletin on November 5, 2016. Indeed, it is the transformative nature and scope of the proposed regulations, together with the high volume of public comments submitted in response to the Rulemaking, that compels us to again urge ODP to re-publish all of the proposed regulations for additional public review and comment and not merely the proposed rate setting regulations. Once adopted, the regulations will be immensely impactful for many years to come, and, accordingly, they merit close and further public scrutiny. Their publication in the form of an Advance Notice, at this point in time, will not materially or adversely impact ODP. To the contrary, publication for additional review and comment will provide ODP with most helpful guidance (and hopefully support) as it prepares the final regulations for review by the independent oversight entities and the general public.

- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

ODP's adherence to applicable federal law, including the OMB Guidance, will result in payment rates that align with the routine and customary costs that providers must incur to render quality care and services to and meet the documented needs of Waiver Program consumers.

PAR's comments to the specific revised sections of 55 Pa. Code § 6100.571 are set forth below. Please note that text in bold proposed by ODP to be added and text in brackets is proposed by ODP to be deleted. Text in italics is proposed by PAR to be added and text with strikethrough is proposed by PAR to be deleted.

Citation: 6100.571 (a)

Discussion: PAR recommends that this sub-section be modified to add another sentence as noted below.

Recommendation: [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 providers so that services are available at least to the extent that such services are available to the general population in the geographic area. *Payment rates will reflect the allowable costs that providers must incur to provide quality care and to meet the documented needs of individuals as set forth in their Individual Support Plans and to ensure compliance with the CMS-approved Pennsylvania HCBS Community Settings State Transition Plan.*

Citation: 6100.571(b)

Discussion: PAR recommends that the new regulations contain a provision that supports the application of an annual inflation adjustment to fee schedule rates. PAR notes that to not calculate and seek funds to support an annual inflation adjustment, without evidence of a decrease in service need and/ or reduction in the provision of services, imposes an impermissible rate reduction based on budgetary considerations contrary to federal law. (42 U. S. C. 1396a(a)(30)(A)) Just as the HealthChoices managed care organizations rely on annual increases to their capitation rates to assure actuarial soundness, and likewise insurance organizations routinely apply for and obtain increases in their premium rates, ID/A providers that certainly are subject to the same health care market forces are no less entitled under law to adjustments in rates and to not be subject to ongoing arbitrary rate freezes. PAR recommends that this subsection be modified as follows.

Discussion: What data sources will ODP rely on to obtain relevant cost data about staff-related expenses? PAR also recommends that this provision be modified as follows:

Recommendation: Staff-related expenses, including *healthcare and retirement benefits, training, recruitment, and supervision.*

Citation: 6100.571 (c)(5)

Recommendation: ODP needs explain how it intends to define and apply "occupancy" in establishing fees and provide the opportunity for public comment on the explanation.

Citation: 6100.571(c)(6)

Recommendation: ODP must identify the "direct and indirect program and administration related expenses" and the source of the expenses relied upon as factors that ODP will consider to set fees and provide the opportunity for public comment on the explanation.

Citation: 6100.571(c)(8)

Discussion: The Waivers incorporate the definition of "reasonable costs" under federal law (2 C.F.R. § 200.404). That definition refers to determining the reasonableness of a cost as considering whether the cost is "ordinary and necessary for the operation" of the entity. (emphasis added). See regulatory definition, *supra* at 2. PAR recommends that this subsection be modified as follows:

Recommendation: [A review of] Federally-approved HCBS definitions in the waiver and determinations made about cost components that reflect *reasonable and necessary costs [necessary and]* ~~related to the delivery of each HCBS~~ *as defined at 2 C.F.R. § 200.404.*

Citation: 6100.571(c)(10)

Discussion: PAR recommends that this subsection be modified as follows:

Recommendation: Other [criteria] factors that impact *the costs providers incur to render quality care and services in to comply with applicable HCBS regulations and ODP directives.*

Citation: 6100.571(c)(7)

Discussion: PAR agrees with this factor in conjunction with our comment 6100.571(c)(2).

Citation: 6100.571(d)

1. The assessment will be:
 - a. externally validated and produce an accurate, objective, and reliable measure of need in all bio-psychosocial domains regarding the individual;
 - b. representative of the frequency, intensity, and duration of an individual's needs;
 - c. age appropriate and developmentally representative;
 - d. fairly and consistently applied to measure an individual's needs against the typical population;
 - e. person-centered and representative of specialized populations' exception needs, such as medical fragility, dual/triple/quadruple diagnoses, sexual offender status, genetic indications, etc; and
 - f. inclusionary and transparent.
2. Administration of Assessment Tool
 - a. A conflict-free entity should administer the assessment tool;
 - b. the assessment tool should be administered by a representative who is a degreed professional with experience in human services;
 - c. the assessment shall be transparent and inclusionary of all team members (including, at a minimum, the individual, support staff, family, and administrator of provider agency); and
 - d. the assessment shall be administered at a time convenient to ensure meaningful representation from all participants.
3. Assessment Results and Reconsideration
 - a. The assessment results will be forwarded within 15 days of administration to the individual, Supports Coordinator, Provider, Administrative Entity, and the individual's family members.
 - b. This information shall include a copy of the assessment domain results as well as the final score.
 - c. Any team member may request reconsideration of the assessment determination by way of written or electronic notice communicated to the Supports Coordinator within 15 days of the receipt of the results of the initial assessment.
 - d. A reassessment shall be conducted by a different representative of the agency that administers assessments.
 - e. The re-assessment meeting will include the individual, family member(s), support staff, and administrator or designee of the provider agency at a time convenient for all and that reasonably allows representation for all interested participants.
4. Appeal Process
 - a. The individual and/or the provider may appeal the redetermination outcome.

PAR requests a meeting to discuss these recommendations with the Department. PAR thanks the Department again for the opportunity to comment on these critical regulations that will profoundly impact the lives of thousands of Pennsylvanians with intellectual disability or autism and the providers who render services to them for years to come.

Sincerely,



President and CEO