

Adams-Moore, Denise

# 3160

14-5210

# 355

**From:** Janice Bove <j.bove@mcguirememorial.org>  
**Sent:** Wednesday, September 13, 2017 1:28 PM  
**To:** PW, ODPComent  
**Subject:** Comments from McGuire Memorial  
**Attachments:** SKMBT\_C454e17091313271.pdf

I am writing on behalf of Sister Thaddeus"  
Attached please find comments from McGuire Memorial.

**From:** director@mcguirememorial.org [mailto:director@mcguirememorial.org]  
**Sent:** Wednesday, September 13, 2017 1:27 PM  
**To:** j.bove@mcguirememorial.org  
**Subject:** Message from KMBT\_C454e

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IRRC  
2017 SEP 15 P 2:00

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

Citation: 6100.571 (a) 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) McGuire Memorial recommends that the new regulations contain a provision that supports the application of an annual inflation adjustment to fee schedule rates. It is noted 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. We recommend that this subsection be modified as follows.

Code 6100.571 Recommendation: The Department will [refresh the market-based data used] examine and use the data sources set forth in subsection (a) (c) to recalculate and establish fee schedule rates at least every 3 years. Every fiscal year, the Department will determine and include in its annual recommended budget request to the Governor the funding amount necessary to support the application of the Medicare Home Health Market Basket Index to recalculate the HCBS fee schedule rates and bring the rates forward through the following fiscal year. Citation: § 6100.571(c). McGuire Memorial recommends that this subsection be modified to delete (a) and replace with (c). Recommendation: [The market-based approach specified in subsection (a) will review and consider] In establishing the fee schedule rates in subsection (a) (c) the Department will examine and use the following factors: Citation: 6100.571 (c)(1) Discussion: McGuire Memorial recommends that this subsection be modified as follows: Recommendation: The [support] service needs of the individuals as documented in their Individual Support Plans. Citation: 6100.571(c)(2) Discussion: McGuire Memorial recommends that this subsection be modified. ODP has noted that approximately 85% of the total costs incurred by ID/A providers relate to staffing and staff related costs. McGuire Memorial is dedicated to securing wages and benefits for ID/A employees that constitute a living wage within the geographic regions where the employees reside in Pennsylvania. Quality of care is best assured by retaining and

recruiting competent and caring employees who are given the opportunity to earn fair wages that reasonably align with the physically, intellectually and emotionally challenging duties they routinely perform day-to-day throughout the year. Quality of care cannot be assured when, in the aggregate, across the state, providers experience staff vacancies exceeding 3500 at any given time and confront the loss of over 9500 staff who leave the ID/A field annually, causing instability for consumers and families. McGuire Memorial recommends that this subsection be modified to include a nationally recognized economic index that is used to determine the funding level that is needed to support a living wage for the individuals who provide day-to-day high quality care and services to individuals with an intellectual disability or autism. Recommendation: The development of staff wages and staff related costs including such as training, benefits, educational and professional experience and licensure and certification requirements, will utilize an independent, nationally recognized index, such as the Massachusetts Institute of Technology's annual Living Wage Calculator.

Citation: 6100.571 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. McGuire Memorial 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) 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.

Discussion: As written, this subsection contemplates the publication of a Notice that, in "summary" fashion, will explain the proposed rate setting methodology to include: (1) the data and data sources relied upon; (2) how the factors listed in subsection (c) were utilized; and (3) the fee schedule rates themselves. The regulation does not specify that the Notice will be published annually or that after receipt of comments, ODP will publish a final Notice that responds to the comments it received. The proposed regulation also does not specify that the Notice will identify and explain the presumptions and assumptions that ODP relied upon in calculating the proposed fees. In consideration of not adopting, in regulation, an established formula to establish the fees, ODP must otherwise be clear and precise in explaining all of the factors and data that will inform its calculation of the fee schedule rates and must respond to the comments that it receives about proposed fees just as it would do in response to comments to proposed rulemaking.

Absent the adoption of the public process described below, ODP must, in the alternative, re-publish, for comment, a fixed rate setting methodology (see, e.g., the methodology that governs payments to skilled nursing facilities (55 Pa. Code Chapter 1187) as a proposed regulation. McGuire Memorial recommends that this section be rewritten as follows: Recommendation: The Department, on or before May 1 of each year, will publish a Notice in the Pennsylvania Bulletin that: (1) identifies the proposed Fee Schedule Rates for the next fiscal year; and (2) explains in specific detail the fee schedule rate setting methodology. The proposed rate setting methodology shall describe how the Department determined and applied the factors set forth in subsection (c) above, including the identification of all presumptions, assumptions, and independent data sources (including reports and cost related studies) that it used to establish the fee schedule rates and how such factors were utilized to calculate the rates. (2) The Department will solicit public comments for 30 days regarding the proposed fee schedule rates and the rate setting methodology. (3) The Department, after review and consideration of the public comments, will publish a Notice in the Pennsylvania Bulletin that adopts the final fee schedule rates and rate setting methodology and that includes its response to each public comment that it received in response to the Notice of Proposed Fee Schedule Rates and Rate Setting Methodology. Support Intensity Scale and PA PLUS The application of the Support Intensity Scale and PA Plus ("SIS Scale") has a fundamental impact on service provision and provider payment and the proposed rulemaking must address the standards that comprise the SIS Scale and how the SIS Scale is applied in practice. ODP has engaged the public in an open dialogue regarding the purpose of and need for a reliable and valid tool to measure support needs. But given the impact of the scores on determining the frequency, intensity and duration of an individual's needs and the corresponding impact on payments to providers, informal dialogue is insufficient protection for the individuals who are assessed and the providers that are confronted with erroneous evaluations.