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Adams-Moore, Denise

**From:** KATHY BROWN-MCHALE <KMCHALE@spininc.org>  
**Sent:** Friday, September 15, 2017 1:52 PM  
**To:** PW, ODPComment  
**Subject:** SPIN's Comments on Advance Notice of Final Rulemaking  
**Attachments:** SPIN comments on Advance Notice of Final Rulemaking Fee Schedule Rates sept 2017.docx



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September 15, 2017

Julie Mochon  
Policy Director  
Office of Developmental Programs, Room 502  
Health and Welfare Building  
625 Forster Street  
Harrisburg, PA 17120

Dear Ms. Mochon:

RE: Comments on Advance Notice of Final Rulemaking: 55 Pa. Code 6100.571 (Fee Schedule Rates), published by the Department on August 19, 2017

SPIN is formally submitting comments to urge ODP to change to the following provisions in the proposed new HCBS rate setting regulations:

- 1. Department's Notice:** The Department indicates its rates are developed using a market-based approach that includes allowable costs that are reasonable, necessary and related to the delivery of service. The Department states it uses *"various independent data sources such as a Pennsylvania-specific compensation study and expense data from prior approved cost reports, as applicable, to ensure the rates reflect the expected expenses for the delivery of services under the waivers for the major allowable cost categories listed as follows: support needs of individuals, staff wages, staff-related expenses, productivity, occupancy and program and administration-related expenses"*. The Department also does a review of implementing Federal, State and local statutes, regulations and ordinances. The Department then established one fee schedule rate for each service.

**SPIN's Points and Position:**

SPIN further asserts that the Department failed to take a market-based approach and did not use readily available independent data sources or consider local ordinances and statutes in establishing one area rate designation for the state of Pennsylvania.

- Independent data sources such as MIT's Living wage data which updated every year, the Census Bureau's Metropolitan Statistical Areas, and CNN area wage data all document differences of 10-30% in wage and cost of living data between the Philadelphia Metropolitan area and other areas throughout the Commonwealth that the Department should use in developing a market-based approach to setting rates.
- The Department's own analysis and rate structure since 2010 has documented and used an area rate designation that resulted in rates being significantly higher in the Philadelphia region and other previously designated "Area #1" areas than Area #2 and previous Area #3 and there is no basis provided for discontinuing this practice.
- Most recently, data reviewed by the Department and documented in its March 11, 2017 published draft report cited that "area factors are driven by wage level realities across the Commonwealth, as wages compose the majority of costs in delivering home and community-based services". In this report, the Department indicated that the Bureau of Labor Statistics data resulted in an 11% differential between the averages of the highest cost areas (Area 1) versus the average of the lower cost areas (Area 2). Even with this analysis, SPIN maintains that the wage cost and local ordinances and requirements of providing service in Philadelphia are at the highest end of the cost differences that resulted in this average.
- The Department failed to consider local ordinances and laws that govern operating in the City of Philadelphia such as:
  - By ordinance Philadelphia requires a minimum wage of \$12.10/hour which is \$4.85/hour higher than the Commonwealth of Pennsylvania's minimum wage of \$7.25/hour.
  - There is a 4% city wage tax in Philadelphia which drives up the cost of labor as the area counties do not have a similar wage tax.
  - There is an ordinance in Philadelphia that all employers must provide paid leave time to all employees and substitutes which is not a law in other areas and drives up the cost of service which was not considered by the Department.
- High cost geographic regions are at a serious competitive disadvantage to other providers of service in low cost regions and within their own labor markets by virtue of the Department's decision to use one statewide rate for every service without regard for the cost of living, labor markets and doing business in various regions of the state.

SPIN also asserts that the support needs of individuals and staff wages are intertwined. People with intellectual disability are complex individuals and those in HCBS often present with other disabilities, including serious mental health needs, medical fragility and/or other intensive support needs which require well-trained, consistent direct support professionals who have multiple competencies to support changing needs over a person's lifespan including the ability to develop relationships with people in service, families and the community. These requirements necessitate that a living wage is achieved so that staff can sustain themselves and their families on their wages and plan for a career in the field of direct support. The well-documented DSP workforce crisis that results in excessive vacancies and turnover is a serious indicator that staff wages have not been adequately considered in the rules and regulations that will govern the fee schedule rates.

**SPIN's Recommendation:** The Department must use an independent data source such as the MIT Annual Living Wage Calculator and consider the actual cost of providing the services required by

the Department's regulations in the geographic area those services are provided. A living wage for DSPs must be considered as a cost of service. SPIN urges a return to the Department's March 11<sup>th</sup> draft publication which provided rates that more accurately reflect the geographic markets for the provision of services for FY 18 and that rates are increased annually by tying them to the Home Health Market Basket Index.

SPIN asserts the Department utilized various wage, ERE, and program assumptions in their rate setting methodology that do not accurately or sufficiently reflect providers' current actual and allowable cost components.

In reviewing the cost assumptions for rate setting as documented by ODP, the DSP wage ranges used by ODP have actually decreased by \$.59 to \$2.09/hr from FY 13 to FY 18. This severely depresses the wages that providers can pay to DSPs and does not reflect costs that are reasonable and necessary to provide HCBS to eligible individuals.

Full Time/Part Time Staff Splits are inaccurate and Part Time percentages are too high inaccurately projecting a lower cost of ERE. In Residential Services, rates assume 80% of DSPs are FT; SPIN has 97% FT with benefits. In Community Participation and Employment, rates assume 30% FT; SPIN has 96% FT with benefits.

Transportation, Supply and Employee Training Costs: In Residential, rates assume 4.4%; SPIN percentage is 6%.

Vacancy Factor: In Residential Services, rates assume a 97% Vacancy Factor; the Home and Community-Based Services Waiver in effect as of July 1, 2017 indicate a 96% Vacancy Factor will be utilized in rate setting.

Occupancy Cost: In Community Participation, rates assume Facility Sq. Ft Cost from \$5.26-\$13.97; SPIN facility cost currently is \$17.36/sq. ft. The average Q2 2017 cost per square foot in the Philadelphia metro region for nonprofit company's commercial space, according to CBRE Research, is \$26.27/sq. ft.

Transportation: In Community Participation, rates assume only \$5,000 cost per year for 3 individuals; SPIN's previously approved and audited cost from FY 17 is \$10,500 per year for 3 people.

Administrative Percentage: Rates assume 10% which is far below actual administrative costs that are necessary and reasonable to provide these services. Statewide cost report data demonstrates a five year average for all providers of HCBS of 15.5%. Furthermore, it is difficult to determine from the lack of detail in the assumptions model whether necessary program related administrative costs have been included; such as costs for staff scheduling and deployment, client funds custodial accounting, occupancy for program management, communication, and travel for Residential, Community Participation and Employment program management.

#### **SPIN's Recommendation:**

The Department must update inadequate rate setting assumptions to reflect actual provider costs that are reasonable, necessary and related to the delivery of service. Administration should be

reset at 15.5% and program administration costs must be included separately in the model. SPIN recommends that providers in the Philadelphia metropolitan area and other high cost areas receive the rates originally proposed in the rates published in the draft rate setting methodology on March 11, 2017.

**Department's Notice:** The Department indicates it will examine and use data sources to recalculate and establish fee schedule rates at least every 3 years.

**SPIN's Points and Position:**

The Department must recognize that marketplace factors vary on an ongoing basis and impacts the HCBS service delivery system throughout each fiscal year. The Department should request an annual recommended budget to the Governor with the funding amount necessary to support the application of a nationally recognized inflation index (such as the Medicare Home Health Market Basket Index) to recalculate the HCBS fee schedule rates and fees forward through the following fiscal year."

Without this type of regulatory requirement, fee schedule rates can be frozen for years and providers will have no ability to meet rising costs for labor and benefits which harms people in service, their families and DSPs and other human service professionals. Unlike some other human services, home and community based intellectual disability and autism services (ID/A) are solely funded by the government and receive no private pay or insurance.

**SPIN's Recommendation:** Fee Schedule rates should be indexed and adjusted annually to a nationally recognized inflation index such as the Home Health Market Basket Index.

**2. Support Intensity Scale and PA Plus**

The use of the Support Intensity Scale and PA Plus in assessing each individual's support needs has a significant impact on services and provider payment and there must be standards in practice and review. SPIN recommends the following:

A. 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.

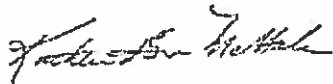
B. Administration of Assessment Tool a. A conflict-free entity should administer the assessment tool; b. the assessment tool should be administered by a representative who is a degreed professional with experience in human services; c. the assessment shall be transparent and inclusionary of all team members (including, at a minimum, the individual, support staff, family, and administrator of provider organization); and d. the assessment shall be administered at a time convenient to ensure meaningful representation from all participants.

C. 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 organization at a time convenient for all and that reasonably allows representation for all interested participants.

D. Appeal Process a. The individual and/or the provider may appeal the redetermination outcome.

SPIN thanks the Department for the opportunity to comment on these regulations that impact the lives of the people we support, their families, our staff and the communities we support and engage with.

Sincerely,



Kathleen Brown McHale  
President & CEO

