DEPARTMENT OF HUMAN SERVICES

Minnesota Department of Human Services
Acting Commissioner Charles E. Johnson
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February 27, 2018

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Senate Health and Human Services
Finance and Policy Committee
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95 University Avenue West
St. Paul, Minnesota 55155

Senator Tony Lourey
Senate Health and Human Services
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Senator Jim Abeler, Chair
Senate Human Services Reform
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St. Paul, Minnesota 55155

Senator Jeff Hayden
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St. Paul, MN 55155

Representative Matt Dean, Chair
Health and Human Services
Finance Committee
401 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Erin Murphy
Health and Human Services
Finance Committee
331 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Federal guidance on Disability Waiver Rate Setting

Dear HHS Chairs and Ranking Minority Members:

On February 15, 2018, the Department received notice from the federal Centers for Medicare & Medicaid Services (CMS) regarding rates paid to home and community-based services (HCBS) providers under the disability waiver rate system (DWRS). I am writing to inform you how the Department of Human Services (DHS) has responded to that notice.

CMS has determined that certain rate increases provided for HCBS under DWRS between 2013 and 2017 are out of compliance with federal law. In particular, CMS has determined that the cost-of-living increases enacted in 2013 and 2014 are duplicative of the inflationary adjustments within the DWRS formulas, and the methodologies should be adjusted to remove the duplication. As a result, we will adjust payment rates and reflect that adjustment in the February forecast.

Background

In the 2013 legislative session, the legislature established the DWRS, a data-based rate structure for disability waiver services based on the average costs incurred by providers across the state.[1] The language establishing the DWRS included automatic inflationary adjustments every five years, to update the base rate to current wage and cost data based upon changes in the Bureau of Labor Statistics and the Consumer Price Index. The first inflationary adjustment took effect July 1, 2017.

In order to give providers an opportunity to adjust to the DWRS system, in 2013 the legislature enacted rate banding (also called rate stabilization), during which rates for most providers would be prevented from increasing or decreasing by more than a specified amount. Rates that are "banded" are held to the rate in place for an individual as of December 31, 2013, and are minimally impacted by the DWRS system. Rate banding was originally established for a five-year period. Over time it has been extended to a sixth year, with a seventh year pending federal approval. Currently approximately 73 percent of home and community-based services are subject to banding. The sixth year of banding ends on December 31, 2019.

Also in the 2013 session, the legislature enacted one percent cost of living adjustment (COLA) increases for all HCBS providers starting in April 2013 and another one percent in July 2015.[2] Subsequently, the legislature enacted a five percent COLA for all HCBS providers in the 2014 legislative session.[3] The total value of the COLAs was 7 percent. The COLAs applied to all providers and were not subject to the banding.

DHS determined that the value of the DWRS inflationary adjustment to take effect July 1, 2017, was 8.5 percent. This inflationary adjustment is subject to banding limits so it only affects non-banded rates.

Based on our understanding, we assumed that COLA rate increases are primarily intended to provide operating increases for inflationary pressures and that the specific COLA rate increases in 2013 and 2014 would be offset by the automatic inflationary increase that took effect July 1, 2017. As a result, in the February 2017 forecast we assumed that the rate increase on July 1, 2017, would be 1.5 percent, since COLAs totaling 7 percent had already been implemented. However, the law did not stipulate that the COLAs were to be offset by the inflationary adjustment. We, along with Minnesota Management and Budget (MMB), alerted the legislature to the issue and proposed a change to clarify the language in the 2017 session. The legislature did not address the interaction between the two types of rate adjustments therefore the full amount of the 8.5 percent inflationary adjustment went into effect on July 1, 2017, for rates that are not banded to historical values. As a result some providers received a 15.5 percent rate increase by "stacking" the COLAs on top of the inflationary adjustment.

Minnesota law contemplates that payments to providers in the disability waiver programs must be implemented consistent with federal requirements. Specifically, the Medical Assistance statute provides that "[t]he commissioner shall make payments to approved vendors participating in the medical assistance program to pay costs of providing home and community-based services . . . **according to federal requirements**"(emphasis

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[1] Laws 2013, Chapter 108, Article 13, Section 12

[2] Laws 2013, Chapter 108, Article 7, Sections 34 & 60; Laws 2014, Chapter 312, Article 27, Section 57

[3] Laws 2014, Chapter 312, Article 27, Section 75

added)[4] and 2013 law specifies that "during the transition to a new disability waivers payment methodology system, the commissioner of human services has the authority to manage the disability home and community-based service waiver programs **within federally required parameters**."[5] In addition, the appropriation for the Medical Assistance program includes only the state share of the cost.

CMS Notice

On February 15, 2018, CMS notified DHS that it cannot have both a legislatively mandated COLA and rebased rates during the same year. This means that CMS will not provide a federal match for rates that stack the 7 percent COLAs on top of the adjustment to current cost of 8.5 percent that went into effect July 1, 2017.

Because CMS will not allow the duplication, Minnesota is not eligible for federal matching funds for the value of the duplication.

February 2018 Forecast

The 15.5 percent stacked rate increase went into effect July 1, 2017, for non-banded rates. In order to give providers adequate notice of the rate change and make necessary systems changes, the stacked rate increase will remain in place until June 30, 2018. The February forecast will include 100% state costs for the 7 percent COLA rate increases that are stacked on top of inflationary adjustments for non-banded rates in effect in FY 2018.

In order to comply with federal and state laws, starting in FY 2019, rates that are subject to banding will continue to receive the COLA. Rates that are not banded and include the inflationary adjustment will no longer receive the COLA. This will be reflected in the February forecast and is consistent with forecast treatment in other instances when state law changes related to Medicaid have been disallowed by CMS.

Due to rate banding only 27 percent of disability waiver services currently receive the full 15.5 percent rate increase, so the immediate impact on most providers will be limited.

Next Steps

In order to make state law consistent with federal waiver regulations, policy makers could take action during the 2018 session to clarify that, effective July 1, 2018, the COLAs enacted during the 2013 and 2014 sessions do not apply to non-banded rates that receive the inflationary increase that went into effect July 1, 2017. This would ensure that DWRS rate increases comply with federal waiver requirements. The Legislature could also consider a rate adjustment for HCBS services that are based on costs such as increases in worker wages.

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[4] Minn. Stat. § 256B.092, subd. 4, paragraph (a)

[5] Laws 2013, Chap. 108, Art. 13, section 13

Seventh Year of Banding

During the 2017 session, the legislature established a seventh year of banding, which extended banding until December 31, 2020, subject to federal approval. CMS has not yet made a decision about approving the seventh year of banding, and has expressed concerns about its potential impact on federal waiver regulations requiring economy and efficiency. CMS has said that it will work with the state to resolve this issue. We expect to have a decision from CMS on the seventh year of banding in time for the November 2018 forecast. The fiscal impact of the seventh year of banding is currently reflected in the February forecast. If the seventh year of banding is not approved, removing it from the forecast would add General Fund costs in FY 2020-21.

Please contact Claire Wilson, Assistant Commissioner of the Community Supports Administration, or Alex Kotze, Chief Financial Officer, with any questions or concerns.

Sincerely,

Charles E. Johnson
Acting Commissioner

cc: Senate Health and Human Services Finance and Policy Committee Members
Senate Human Service Reform Finance and Policy Committee Members
House Health and Human Service Finance Committee Members