

The Philadelphia Alliance

Representing Community Providers for People with Mental Health, Mental Retardation and Chemical Dependency Needs.

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Ms. Estelle Richman
Secretary
Department of Public Welfare
Box 2675
Harrisburg, PA 17105

Mr. Kevin Casey
Deputy Secretary
Office of Developmental Programs
Department of Public Welfare
Box 2675
Harrisburg, PA 17105

Dear Secretary Richman and Deputy Secretary Casey,

This letter is to provide The Philadelphia Alliance's comments on the recent documents released by ODP regarding prospective payment systems, cost reporting, and related policies. As an organization of 43 provider agencies in Philadelphia that serve individuals with needs related to intellectual and cognitive disabilities, mental illness, and chemical dependency, we are deeply concerned with the impact these systems and policies will have on the lives of the people our members support and the organizations themselves. We very much appreciate this opportunity to provide comments.

An overall comment: There are many serious and significant issues that need to be resolved in a constructive manner to enable the service system to make it through this transition to a different payment system. Issues such as reimbursement for property acquisition, advances and banking relationships, vacancy management, retained revenue, etc., etc. Over the last four to five years, **all** of them have been discussed in great depth as part of the FIAT activity and other related meetings and communications. Typically, more than one potential solution has been discussed in good faith between the FIAT members. Now it seems that all of that thought and deliberation has been for naught; everything is starting over with a whole different set of ground rules and values.

It is our great concern that ODP and its consultant do not fully understand the financial vulnerability of most providers and the complexities of delivering services in the community. We encourage more communication and deliberation to develop a more educated perspective; and we are happy to help with such a process. **As currently constructed the Draft policies and cost reporting procedures are not feasible for the healthy continuation of this service delivery system.**

For the people who receive and rely on the services and supports provided in this service system, it is apparent that system transition will limit choice, quality and control for all, values formerly embraced by ODP. As the service system undergoes this change, one cannot dismiss the likely impact this transition will have on the people directly impacted; those individuals with intellectual disabilities. Provider collapse is just one of those impacts.

Primary Recommendations.

1. **We call on ODP/DPW to develop a plan for the inevitable: How will individuals' health and safety be ensured in the likely event a segment of the provider system collapses or chooses to close down services? What is the process and protocol to ensure people are not put in jeopardy.**
2. **ODP/DPW needs to develop policies that enable providers to maintain banking relationships and credit sufficient to stay in business.**
 - a. Because providers are by and large cash poor and do not have liquid fund balances, once the system no longer provides advances, providers will be more dependent upon banks for working capital than ever. When reimbursement for owned property does not cover the cost of P & I, (principal and interest), providers will also lose long term assets.
 - b. Provider agencies are in the financial and asset positions they are today because they have done what the government, state and counties, wanted them to do.
 - c. The 4300 regulations are the law of the land and should be followed. The proposed methodology picks and chooses fiscal policies between the 4300s and the OMB Circulars, and in every choice providers have lost. **The whole design has the effect of transferring more risk to provider agencies and impeding cash flow. As everyone knows, cash flow and reserves are even more necessary when risk is increased.**
 - d. See **Section 7. c. under Audits** – regarding no more “Unqualified Audits”.
3. **There must be a regulatory or legislatively mandated margin and trending factor as part of the costing and rate setting process, not one that must be negotiated annually as part of the political process.**
 - a. **History has shown that if these two highly significant aspects of the costing and setting of rates are left to the legislative-executive process, they will never happen.** Rates will stagnate, resulting in reduced quality and services.
 - b. The only way to achieve necessary cash flow and reserves to accommodate the increased risk is through the mechanisms of allowable margin and valid trending going forward in a predictable and consistent manner.
 - c. The allowance for retention of up to 5%, as stated, is appropriate; but that assumes that the actual rates are somewhere in the vicinity of the real costs.
 - d. Is there one margin calculation for an agency, or is there an appropriate margin calculated for each cost report, or each W code?
4. A train wreck is scheduled for July 1, 2009 and we ask ODP to consider an alternative strategy. As currently planned, it will be the **first time** agencies are being paid by PROMISe, **verified by HCSIS**, the **first time** for use of **NEW Service Definitions**, and the **first time without any possibility of advances** to start the fiscal year. [Note: Although there will have been a practice year of billing PROMISe, the verification by HCSIS and CAO is a whole new dynamic.] There are some suggested partial solutions which would ease the amount of turmoil happening all at once. Implementation of one or more than one of these could help to ease the pressure on the system and enhance the feasibility of continuation.
 - a. **Delay the live billing and payment through HCSIS until July 1, 2010.**
 - b. **Continue to have cost settlement through FY10 or even FY11.**
 - c. **Delay the implementation of the new service definitions.**
 - i. **If one or the other is to be delayed, it would make more sense to implement the new service definitions first (so they can be worked into the financial processes) and delay the live billing or prolong the utilization of cost settlement.**

- d. **ODP could provide advances directly to provider agencies with PROMISE payments being automatically reconciled against the advances. This could be done.**
 - e. **Two more years of cost settlement – with margins and trending in place could allow for the build up of reserves, so that cash flow and risk could be better addressed.**
5. One major unresolved issue that affects everything about the new payment system is the **Capacity Issue**, or **vacancy management**. For the service capacity of the system to be maintained, **policies must be developed that act to retain capacity**. Most often this is discussed in reference to residential settings and people temporarily in the hospital or leaving the home permanently; but this same problem exists for non-residential services as well. **If ODP wants the service capacity to continue, then it must find a way to fund the costs that exist while there is an unutilized “vacancy”**, for lack of a better term.
- a. One related issue is the need for prompt direct access to people who want a service and are funded to receive such a service.
 - b. Much of the proposed model is similar to a hospital fiscal model, which negates the permanency and security needs of people and the values the community system is founded upon. People will be uprooted from their homes as agencies will be forced to close homes to eliminate unfunded costs.
 - c. **The lack of policy development in this area has a huge impact on this or any proposed process of costing, rate setting, and payment.**
6. Property Issues. In the past, government encouraged provider agencies to purchase property for homes etc., because it was less costly to everyone in the long run; and ownership also provided some collateral to obtain financing from banks. Now, under proposed rules, agencies will be forced to consider selling their properties and leasing at higher costs, they will receive less reimbursement than the costs involved, with no participation allowance to keep the property in the service system.
- a. **The Philadelphia Alliance strongly recommends continuing the existing policies relating to real estate contained in the duly promulgated fiscal regulations (4300’s)**
 - i. **Since residential real estate costs are funded through waiver ineligible revenues (client SSI revenues and state-only revenues), these costs are not governed by federal rules.**
 - ii. **Existing real estate reimbursement policies include: reimbursement of mortgage (principal and interest), potential for up to 8% Continuing Participation Allowance (equity return), down-payment assistance, and the roll-over of equity if a provider sells a property and buys another to continue to provide waiver services.**
 - b. **We would also maintain that the costs of providing space for habilitation services and employment services are program costs, not administrative costs.**
 - c. Attachment II, Page 4, states that policies related to depreciation of buildings are still being developed, and yet the cost report instructions say depreciation of buildings is allowed as an Admin cost.
 - d. The 4300 regulations have proven effective in providing stable homes for people, which is a very important factor in the quality of life for people receiving residential services. Ownership of homes provides stability to individuals in service, so that they cannot be evicted from their homes for things that the landlord is not pleased with, and it supports a sense of community. The stability supports relationship building, and it sends a better message to the neighbors who are wary of renters.

7. **Audits. Cost Reports will need to be pre-audit.** There is no way that audits will be complete prior to the demand for submission of cost reports, both in this short term situation and going forward. **There are also many related questions about audit requirements and timeframes that will need to be addressed, especially for multi-service providers.**
- a. Regarding the auditing process, Attachment I, page 3, states “currently . . . providers must have an independent audit performed, based on OMB-133 requirements. DPW anticipates these independent audits will continue to be required in addition to audits specific to the cost report.” **This whole area needs more thought, discussion, and clarification.**
 - i. There are many forces at work that prevent independent audits from being completed by November, when the cost reports are due; yet, the instructions state that the cost reports should be post-audit.
 - ii. Does this mean that providers will be required to have more audits performed? (another significant cost)
 - b. There has been a change in auditing standards that prevents an auditor who might be hired as a consultant to assist with the cost report from being the same auditor an agency would hire to complete the independent audit. Obviously, this means more auditors and more costs throughout the system.
 - c. Auditors who have reviewed the proposed changes in reference to current provider agencies have stated that without the same receivables (advances) and without assets (property ownership), they could not give such an agency an “**unqualified audit**” designation; but rather the agency would receive a designation of a “**Going Concern Opinion**”, which essentially means the environment the business is operating in is perilous.
8. **Direct, Indirect, and Administrative Costs.** Regarding Direct Costs, Indirect Costs, and Administrative Costs, the general descriptions listed near the beginning of page 15 of the instructions seem reasonable:
- “Direct care expenses** are costs that can be easily and conveniently traced to the particular service provided. Direct care expenses must be directly charged to the appropriate waiver procedure codes, based upon actual costs incurred.
- Indirect program expenses** include costs that cannot be easily and conveniently traced to the particular service provided.
- Administrative expenses** include all executive, organizational and clerical cost associated with the general management of the organization.”

However, the detail that follows is way out of bounds.

- a. Why would repairs and maintenance, insurance and depreciation be administrative?
- b. Why would training be an administrative cost, rather than direct or indirect, as noted in Attachment II?
- c. Why could transportation not be a direct cost?
- d. Costs for utilities, telephones, rent and transportation costs related to gas and vehicle maintenance appear to be considered indirect or administrative rather than direct costs for individual sites; why?
- e. Also, the forms do not support the definition of Indirect as described.
- f. **In the middle of page 16 of the draft cost report instructions, it states, “Alternative approaches to what is described above for allocations of costs may be used but must be documented and used consistently each year, and described in Schedules H, H-1, and H-2.”**

- i. Contrary to what is stated on page 3 of Attachment I, the greater level of detail required by these draft instructions goes way beyond being able to explain variances. Much of it creates minutiae.
- ii. And the confusion created by the way indirect and administrative costs have been conceptualized makes much of the detail hard to utilize in any constructive fashion.
- iii. Agency MIS and accounting systems do not currently track the detail required in this report in the format required. It is time consuming and costly to extrapolate from existing practice to populate these forms.
- d. Why can't there be links from cells in the spreadsheets that are related to each other and roll-ups that automatically summarize as appropriate?
- e. **It is unclear; but it appears that Columns D and E of Schedule A may be intended to deal with ineligible and base.**
 - i. **Obviously, "Ineligible" costs need to be reported somewhere, but the guidance here is sorely lacking.**
 - ii. The directions for column D refer to (1) costs related to R+B, (2) costs of residential occupancy costs not related to habilitation services. The directions for column E say "show the cost of residential occupancy costs attributed to habilitation services to waiver services".
 - 1. That is all of the direction and explanation given; and it is very confusing.
 - iii. **Much clarity is needed.**
- f. We request a functional crosswalk from the current spreadsheets to these cost reports, since ODP, counties, and providers have invested so much preparatory effort in the spreadsheets?
 - i. There is much complexity in the switch that has not yet been addressed in 52 pages of draft instructions.
- g. **Cost parameters are mentioned. How and when will these be established? Will providers have this information before doing cost reports?**

10. **Excess Compensation Requirements. Clarify the excess compensation requirements.**

- a. It seems that what is described (the PAP) is a partial and older version (2005) than was utilized in recent history. This cannot be a total compensation chart, we read it as salary only. Are we correct?
- b. These requirements could dramatically interfere with a lot more types and levels of staff than just CEO's.
- c. It could be a problem for direct service staff, as well as critical positions in I.T. and accounting, the very areas so intensely demanded by these draft procedures and policies.
 - i. Once the PAP to be used is clarified, an exception process needs to be established, because it would prevent agencies from adding the very expertise that are needed by these requirements. Rather than providers all hiring high-priced consultants to do this work, most will opt to build the expertise in house to ensure the strength of their organizations for the long run.
 - ii. The language in the instructions says, ". . . **such as** a Modified Compensation Review System or Personnel Action Plan (PAP)." Such as?
- d. What about other benefits provided currently by providers such as disability insurance and tuition participation as an allowable compensation/benefit cost? The cost report does provide an "Other" column for anything else that hasn't been defined separately in benefits. Would such benefits be included there?
- e. Question: "The benefit percentage rate to be applied in determining maximum compensation costs will be published annually in a Departmental Bulletin." (page 17 Cost Report Instructions)

