



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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MEMORANDUM

TO: The Honorable Robert F. McDonnell
Governor of Virginia

The Honorable Walter A. Stosch
Chairman, Senate Finance Committee

The Honorable Lacey E. Putney
Chairman, House Appropriations Committee

Daniel S. Timberlake
Director, Virginia Department of Planning and Budget

FROM: Cynthia B. Jones *Cynthia Jones*
Director, Virginia Department of Medical Assistance Services

SUBJECT: Exceptional Rate Report First 6 Months

The 2013 Appropriation Act, Item 307 BBBB states:

Effective July 1, 2013, the Department of Medical Assistance Services shall have the authority, to establish a 25 percent higher reimbursement rate for congregate residential services for individuals with complex medical or behavioral needs currently residing in an institution and unable to transition to integrated settings in the community due to the need for services that cannot be provided within the maximum allowable rate, or individuals whose needs present imminent risk of institutionalization and enhanced waiver services are needed beyond those available within the maximum allowable rate. The department shall have authority to promulgate regulations to implement this change within 280 days or less from the enactment of this act.

2. The department, in cooperation with the Department of Behavioral Health and Developmental Services, shall report to the Governor, the Chairmen of the House Appropriations and Senate Finance Committees, and the Director, Department of Planning and Budget on the effectiveness of this rate increase in addressing the transition of institutionalized individuals to the community. This report shall include, but is not limited to, the number of individuals eligible for the higher reimbursement rate, whether they transitioned from an institution or were already receiving community services, and the costs to the Medicaid program. A report shall be due by February 1, 2014, that covers the first six months of FY 2014 and another report is due by August 1, 2014, that covers the last six months of FY 2014.

Should you have any questions or need additional information, please feel free to contact me at (804) 786-8099.

CBJ/

Enclosure

pc: The Honorable William A. Hazel, Jr., MD, Secretary of Health and Human Resources

**Department of Medical Assistance Services
Annual Report to the General Assembly**

***Report on the Effectiveness of the Exceptional Rate Increase in Addressing the
Transition of Institutionalized Individuals to the Community***

December 2013

Report Mandate

The 2013 Appropriation Act, Item 307 BBBB states:

Effective July 1, 2013, the Department of Medical Assistance Services shall have the authority, to establish a 25 percent higher reimbursement rate for congregate residential services for individuals with complex medical or behavioral needs currently residing in an institution and unable to transition to integrated settings in the community due to the need for services that cannot be provided within the maximum allowable rate, or individuals whose needs present imminent risk of institutionalization and enhanced waiver services are needed beyond those available within the maximum allowable rate. The department shall have authority to promulgate regulations to implement this change within 280 days or less from the enactment of this act.

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Background

Section BBBBB of the 2011 Acts of Assembly directed the Departments of Medical Assistance Services (DMAS) and Behavioral Health and Developmental Services (DBHDS) to review the current Intellectual Disability (ID), Day Support (DS) and Individual and Family Developmental Disabilities Supports (DD) Waivers to identify any improvements and report on the proposed waiver changes and associated costs.

In response to the legislative directive to “enable individuals with high medical needs and/or high behavioral support needs to remain in the community setting of their

choice,” the report offered the model of an enhanced reimbursement rate for high needs individuals receiving supports in a group home through sponsored residential or in-home residential settings. The term “exceptional rate” was to be used to refer to this enhanced rate. The 2013 Virginia Assembly authorized DMAS to promulgate regulations to establish an exceptional rate at 25% above the maximum Medicaid rate for congregate residential services (the congregate residential rate is currently \$17.36/hour in Northern Virginia and \$15.10 in the rest of the state).

As of November 1, 2013, 9,784 individuals were enrolled in the ID Waiver, of which, DBHDS estimates three to five percent (300-500 individuals) need additional residential supports. In addition, as of October 2013, 725 individuals were residing in state training centers, of which 15 to 20 percent (109 - 145 individuals) will need additional residential supports to successfully transition to the community.

Implementing an Exceptional Rate in Virginia

The Departments of Medical Assistance Services (DMAS) and Behavioral Health and Developmental Services (DBHDS) formed a work group in April 2013 to design and implement an “exceptional rate” for individuals as described in Item 307 BBBB. Activities identified by the work group as necessary for implementation of the exceptional rate are listed below:

1. Promulgate emergency regulations to define the criteria that must be met for an individual enrolled in the Intellectual Disability (ID) Waiver to be eligible for the exceptional rate ;
2. Request the necessary approval from the Centers for Medicare and Medicaid Services (CMS) to implement the exceptional rate in Virginia;
3. Identify information system changes necessary to submit, pay and track claims using the exceptional rate;
4. Determine and address the impact of the rate on contractors by performing provider audits;
5. Define the operational preparedness of DBHDS to manage the application and prior authorization processes for the exceptional rate;
6. Design and provide training for providers on the application process and criteria for qualifying for an exceptional rate; and,
7. Notify providers of the effective date and process for applying for the exceptional rate.

Based upon the time required to accomplish the tasks listed above, the two departments agreed that the target date of January 1, 2014 was reasonable for implementation, as long as approval was received by CMS. DMAS’ progress on the above activities is outlined in the following section.

Activities Completed as of November 2013

DMAS and DBHDS working collaboratively have accomplished the following:

1. Emergency Regulations

DMAS and DBHDS drafted emergency regulations to: (1) define eligibility criteria for the exceptional rate, (2) define provider qualifications required to receive an exceptional rate; (3) describe the provider application process to receive the exceptional rate; and (4) outline the appeals process to be used when a provider is denied the exceptional rate. DBHDS coordinated a stakeholder review of the Emergency Regulations. As of November 2013, the Office of the Attorney General is reviewing the regulatory package. (See Appendix A for the proposed emergency regulation.)

2. ID Waiver Amendment

DMAS submitted a request for approval of the exceptional rate to the Centers for Medicare and Medicaid Services (CMS) in the form of a draft ID Waiver Amendment April 30, 2013 in order to expedite the approval of the exceptional rate amendment once formally submitted. DMAS, DBHDS, and CMS conducted a series of discussions to clarify outstanding issues, and a formal ID Waiver Amendment was submitted on July 12, 2013. Further discussions with CMS took place on August 22, 2013 with no significant progress toward CMS approval. CMS has been reluctant to approve the State's request for this amendment because of concerns with the overall rate setting process used in Virginia for over 20 years. On October 1, 2013 CMS notified DMAS that CMS staff were furloughed. CMS issued a formal request for additional information (RAI) on October 10th requesting further detail on the state's plan to create a clear and comprehensive rate methodology. The request also required the state to provide justification for the requested 25% exceptional rate increase to include the manner in which the rate would be used and the direct relationship between the rate and the augmentation of the service. A subsequent meeting was held on October 24th with DMAS, DBHDS and CMS to discuss the RAI. DMAS and DBHDS are working to comply with the newly outlined rate methodology requirements with plans to submit to CMS in early December.

DMAS and DBHDS currently a contracted rate setting study underway, through Human Services Resource Institute (HSRI) which will be completed by July of 2014.

3. DMAS Information System Changes

Minimal changes are needed to the DMAS information system to facilitate payment for the exceptional rate. A modifier (H) will be added to the existing congregate residential service procedure code (97535) that will allow payment of the higher rate; and testing is underway. The change is targeted for implementation in January 2014.

4. Cost

The exceptional rate increase would be based on the individual's individual support plan or plan of care and needs. For the purposes of a global cost estimate, an average

rate increase of 25% was used for this population group. The fiscal impact would be approximately \$3,682,880 (GF) annually.

5. DBHDS Operational Preparedness

DBHDS is the entity that determines prior authorization for services provided through the ID Waiver, which will include authorizing the exceptional rate once it is implemented; therefore, there will be no impact on the DMAS service authorization contractor, KePRO. Necessary staff training on approving providers and authorizing the rate will be provided by DBHDS utilizing existing staff.

6. Provider Training

DBHDS will determine the scope and need for provider training.

7. Medicaid Memorandum

DMAS and DBHDS agreed that notification of the effective date of the exceptional rate will be through the release of a Medicaid Memorandum to providers of congregate residential services and ID Waiver case managers. The memorandum will be released 30 days prior to the effective date of the exceptional rate.

Summary

Much of the first six months related to implementing the exceptional rate involved creating the regulatory framework to define the criteria and process for eligibility for receipt of the exceptional rate and coordinating with the Center for Medicare and Medicaid Services to receive approval of a waiver amendment to draw federal matching funds to implement the exceptional rate. The waiver amendment submission and approval process has proven to be unusually complex and challenging, but DMAS has recently submitted additional information requested by CMS for approval. If CMS approval is not timely, DMAS will ask the Secretary of Health and Human Resources to intervene with CMS. DMAS, in coordination with DBHDS, is ready to fully implement the exception rate upon completion of the regulatory process and approval by CMS. Both agencies recognize the urgency of moving forward quickly, in order to provide this additional resource to individuals with complex behavioral and/or medical needs and to ensure that providers of congregate residential services can assure the health and welfare of these individuals.