Fiscal Analysis Department
Minnesota House of Representatives

ISSUE BRIEF

Disability Waiver Rate Setting – FY 2019 Rate Changes

Overview of Federal Rate Decisions and Resulting State Changes
June 2018

The Disability Waiver Rate Setting (DWRS) system determines the rates paid by the State of Minnesota to various providers for services to individuals enrolled in the state's Medical Assistance (MA) disability waivers. Rates are paid to providers for a wide variety of personal care, support, programmatic and transportation services for Home and Community Based Services (HCBS) listed in statute[1] and under the state's federally approved HCBS plan. In February 2018, the Minnesota Department of Human Services (DHS) received guidance from the federal Centers for Medicare and Medicaid Services (CMS) that they would not recognize both a cost of living adjustment (COLA) and an automatic inflationary adjustment to the base wage rate used in the DWRS system in the same year because they are considered duplicative. The amount of the rate that is duplicative is equal to a 7 percent increase and applies only to providers who are not subject to rate "banding". This decision has two main impacts. First, because both parts have been recognized by DHS in current paid rates (FY 2018) for certain providers (those not subject to rate banding), but will not be fully recognized by CMS, the state is currently paying the whole cost of the duplicative 7 percent for FY 2018. Second, because CMS does not recognize that portion of the rate, and there is no state appropriation to continue that 7 percent portion of the rate, it will end for certain providers on July 1, 2019 when FY 2019 begins. This Issue Brief explains the basic details of the DWRS system and the effect of the CMS rate disapproval.

<u>DWRS Overview</u>

In 2007, CMS informed DHS that Minnesota's MA disabilities waivers were out of compliance with federal requirements to have uniform rate determination methods. At that time, provider rates were set by counties resulting in 87 different rate structures in the state. CMS issued a corrective action plan that required Minnesota to establish a statewide rate setting method. The 2013 legislature established the DWRS system[2] that put in place a statewide rate setting system beginning on January 1, 2014.

The primary driver of rates in the new methodology is wages paid to direct service employees. Other cost components including supervisory costs, employee benefits, taxes, and program costs are also considered as part of the rate setting mechanism. The statute also requires that the base

[1] Minnesota Statutes, Chapter 256B.4914, Subd 3
[2] Laws 2013, Chapter 108, Article 13

wage rates be adjusted for inflation every five years[3]. To protect providers from the potential negative impact of going from a county based rate structure to a single statewide methodology, and to control the cost of implementation, the new methodology was implemented (initially) over a five year period. During this "banded" period, changes to providers rates were limited to plus or minus .5 percent of the rate in the prior calendar year for years one and two and plus or minus 1 percent of the prior calendar year's rate in years three, four and five. In 2015 an additional year of banding was enacted with a limit of plus or minus .5 percent. All of these actions were approved by CMS. The sixth year of banding ends December 31, 2019. The 2017 legislature passed legislation asking CMS for a seventh year of banding. Approval for the seventh year of banding is still pending. Currently, approximately 73 percent of DWRS providers are subject to banding and approximately 27 percent of providers are not subject to banded rates.

Additional Legislative Changes During the Implementation Period

Separately from the basic DWRS enabling legislation, the 2013 legislature enacted a 1 percent COLA beginning in April of 2013 and an additional 1 percent beginning in July of 2015 for all Home and Community Based Services (HCBS) providers, which includes all DWRS providers. In 2014, a law was enacted adding an additional 5 percent COLA for all HCBS providers. The total 7 percent COLAs that were put in place in 2013 and 2014 are outside the DWRS rate setting model. All DWRS providers receive the 7 percent COLA whether they are affected by rate banding or not.

Application of the First Inflation Adjustment and Forecast Assumptions

As previously mentioned, the DWRS statute requires that there be an inflationary adjustment every five years to the base wage rates and costs used in the rate setting mechanism. The language requires updating base wage rate using Bureau of Labor Statistics data and other costs using Consumer Price Index (CPI) data. The inflationary increase calculated by the Department of Human Services for the initial five year period was 8.5 percent. During the 2017 legislative session, with the first inflationary adjustment due to occur on July 1, 2017, the executive branch made a recommendation that the law be amended to clarify that the 7 percent COLAs that were already in statute were meant to offset the five year inflationary increase. That is, the total increase to the DWRS mechanism would be 8.5 percent, the statutory 7 percent already in place plus an additional 1.5 percent. The February 2017 revenue forecast reflected this view of how inflation would be applied in the DWRS model. Minnesota Management and Budget (MMB) communicated to the legislature that if the clarification was not made to the law, the five year inflationary figure (8.5 percent) would be stacked on top of the 7 percent and that the November 2017 forecast would be adjusted to reflect an 8.5 percent increase for those providers that were not subject to rate banding. The 2017 legislature did not change this part of the DWRS statute and on July 1, 2017 the 8.5 percent inflationary adjustment went into effect for DWRS rates that were not banded to historical values. Providers in this category would receive a total of 15.5 percent in increases due to the 7 percent statutory COLAs plus the 8.5 percent on non-banded rates.

[3] Minnesota Statutes, Chapter 256B.4914, Subd 5(h)

CMS Rate Decision and DHS Reaction

In February of 2018 CMS informed DHS that they viewed the inflationary adjustment required by statute to be duplicative of the COLAs in statute and that they would not recognize both in the same year. In practice, this means that the federal government will not pay their 50 percent share of the "duplicative" 7 percent. This decision by CMS caused two decisions to be made by the executive branch. First DHS decided that since providers were already being paid the "stacked" rate and that they could not adjust the rate structure immediately, that the state would continue to pay that rate until the end of the current fiscal year (June 30, 2018) and then adjust it down to the CMS recognized rate. Second, the February 2018 general fund forecast was adjusted to reflect the state paying 100 percent of the cost of the 7 percent, for non-banded providers (because there was no federal 50 percent reimbursement) during FY 18 and the 7 percent going away entirely (reducing the forecast by the 50 percent state share of the 7 percent that the forecast had previously assumed) for non-banded providers at the start of FY 2019 (July 1, 2018) and after.

Legislative Reaction

The 2018 legislature passed language that attempted to address this issue. Chapter 201, which was vetoed, included a revision to the DWRS model that made several changes. The language increased the Competitive Workforce Factor in the DWRS formula by 4.55 percent on July 1, 2018. This adjustment was designed to increase the DWRS formula rate to a level that would spend the same amount in total as the 7 percent would have cost for FY 2019, but in a way that would receive CMS approval (and 50 percent federal reimbursement). This change also recognized CMS's concern that there should not be "outside the model" adjustments. Additionally, the inflationary adjustment was changed from a five year period to every two years beginning in FY 2022. The new language on inflation would allow the Competitive Workforce factor to be adjusted by up to 1 percent in each two year period based on any gap between (average) wages for DWRS workers and (average) wages for other similar workers. Chapter 201 appropriated $27.5 million to the Medical Assistance program in FY 2019 for these changes. The projected expenditure for these changes in FY 2020-21 was $32.5 million.

Effect on Providers

Because no legislation became law to change the DWRS system and because there is no appropriation to pay for the disallowed federal 50 percent of the 7 percent duplicative inflation rate, the 7 percent will no longer be in effect beginning July 1, 2018. As previously mentioned, approximately 73 percent of providers are subject to banded rates in the DWRS system and should not be impacted by this rate change. The approximately 27 percent of providers not subject to historically banded rates will see a rate reduction equal to the 7 percent duplicative inflation for rates paid on July 1, 2018 and after.

For more information, contact Doug Berg, at 651-296-5346 or *doug.berg@.house.mn*