NYS Association of Health Care Providers
Representing Home & Community-Based Care

Kathy Febraio
President

20 Corporate Wood Blvd.
2nd Floor
Albany, NY 12211
hcp@nyshcp.org
(P) 518.463.1118
(F) 518.463.1606
www.nyshcp.org

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Department of Health
Office of Aging and Long-Term Care
Bureau of Community Integration and Alzheimer's Disease
One Commerce Plaza, Suite 1610
Albany, NY 12210

HCP Comments on Proposed Rates: §1915(c) NHTD and TBI Waivers as posted in "Public Notices." *New York State Register*, November 1, 2023, p. 116.

We have reviewed the Public Notice, as well as both the Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) programs proposed waiver amendments as referenced in the Notice and offer the following comments in response thereto.

Concern 1: Two-month Lag Between Wage and Rate Implementation

As stated in the Public Notice, the Home and Community Support Services (HCSS) rate amendments were proposed pursuant to the Home Care Worker Minimum Wage provisions enacted in the FY 2024 New York State budget. Yet the implementation dates for these two rudiments are incongruous.

The new Home Care Worker Minimum Wage takes effect and must be paid, along with mandated fringe benefits, beginning January 1, 2024, although the proposed rate amendment isn't actualized until March 1, 2024. Employers will comply with the new wage mandate; however, the lag between the wage mandate and the rate changes may cause providers, many of whom are operating at the narrowest of margins, to borrow money to make payroll. The cost of borrowing has escalated precipitously and is not reimbursable. Although retroactive payments for rate adjustments are addressed within the amendment as historical context (2019), the amendment does not appear to specify whether there will be retroactive payments corresponding to this rate adjustment. Regardless of whether there will eventually be retroactive payments, the cost of the lag will be borne by providers.

Concern 2: Transparency of Rate Methodology

It is unclear what methodology was used to determine the proposed Home and Community Support Services (HCSS) regional rates in the NHTD and TBI waiver programs.

In its commentary on page 14 of the proposed NHTD Waiver Amendment, the Department states that the proposed rates were derived from 5-year historic rates (2018-2023), which were adjusted over the 5-year timespan to meet minimum wage mandates plus associated fringe costs, and which include a rural rate add-on and a 1% across the board increase to help offset the effect of the COVID-19 PHE on provider costs.

There is nothing in this commentary that elucidates the actual methodology used to calculate the rate increases proposed for March 1, 2024, nor is there any discussion of the underlying assumptions upon which the rate increases were based. Further, the proposed rates appear to derive from what has been paid in the

past rather than on the actual cost of delivering care including paying the mandated wage and fringe going forward.

Concern 3: Overall Rate Insufficiency and Inconsistency

Our concern over the opaque methodology is compounded by the overall insufficiency and inconsistency of the proposed NHTD and TBI HCSS rates as released to us via email by the Department of Health on November 22, 2023.

To illustrate using the proposed rates for the NHTD program, in New York City the minimum wage will increase by $1.55 on January 1, 2024. While Worker Wage Parity was reduced, other wage-dependent and statutorily mandated fringe costs* will increase by approximately $2.06, yet the rate for HCSS in NYC has been *reduced by 0.3%.* In comparison, in Rest of State (ROS) areas, the minimum wage will increase by $1.35, and other wage-dependent and statutorily mandated fringe costs will increase by approximately $2.04 (like downstate). Yet the reimbursement increase in the ROS is $3.44, which is closer to covering the wage increase and related fringe for many providers, but which doesn't come close to bringing the overall rate to a sustainable level. With comparable wage increases and fringe costs, a *.3% rate reduction* in one area and a *10.6% rate increase* in another appears inconsistent and is inexplicable absent a transparent methodology.

When expressed as a percentage, there is also a wide discrepancy between rate increases in adjacent areas. Both NYC and Long Island/Westchester have Worker Wage Parity costs and the same minimum wage obligations beginning on January 1, 2024, yet there is more than a 20% disparity between the two regions' proposed rates in both the NHTD and TBI Waivers.

* Wage-dependent and mandated fringe costs include Worker Wage Parity in New York City, Long Island, and Westchester County, Fair Labor Standards Act, in-service and training, New York Labor Law requirements, Workers' Compensation, Sick Leave, State and Federal Unemployment taxes, and COVID-related sick leave. Further, agencies with Collective Bargaining Agreements may have to continue to pay Worker Wage Parity at the 2023 rate after January 1, 2024. This calculation does not include administrative costs specific to the NHTD and TBI Waiver programs.

Conclusion

Reimbursement rates for home care have been insufficient for more than a decade. Using historical rate trends as a starting point for prospective rates guarantees that underfunding in the home care sector will continue to grow. Simultaneously, the care delivery costs to providers are escalating far faster than are reimbursement rate adjustments. Not only are the proposed rates prima facie insufficient, but the methodology and assumptions employed in their development is opaque and appears to be inconsistently applied. The 2-month lag means that every hour of care provided between January 1 and March 1, 2024 will be provided at a loss. Retroactive payments are appropriate, however only mitigate the severity of the loss.

HCP encourages the Department of Health to make its rate methodology publicly available in an easily understood manner and to ameliorate the burden to service providers by making rate adjustments timelier and more sustainable.