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Hearing Date: 11/16/2023

Today's Date: 12/11/2023

Agency: Ohio Department of Medicaid

Rule Number(s): 5160-1-06.1, 5160-1-06.5, 5160-12-05, 5160-12-06, 5160-46-06, 5160-46-06.1

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If no comments at the hearing, please check the box.

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List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Theresa Esterhazy
2. Janemarie Sowers
3. Natalie Wheeler
4. Dave Cocagne – Silver Birch Living
5. Kevin Beard
6. Sally Fish
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## Hearing Summary Report

### **Consolidated Summary of Comments Received**

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

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#### **Comment received from Theresa Esterhazy:**

I would like to make a statement regarding the proposed changes for Provider Rates 5160-46-06.

As an Administrator for a small home health care company that has been providing services since 1996, I feel I have a very good perspective on how greatly a need for an increase in rates is. As home health care providers, we have had very few rate increases for Medicaid services and even experienced rate decreases. We are unable to offer competitive wages and struggle to hire quality staff. We cannot compete with hospitals and nursing homes or private entities. It is sad when someone can make more money working fast food than providing personal care to a severely disabled person.

We are also a provider under the DODD and are thrilled that they will be increasing the rates by 31- 38% in 2024, but I have to question why more money is being put into services for those individuals over someone who is not developmentally disabled, are they not just as important in their need for care? How are they increasing by so much but the other areas are not.

Bottom line, agency providers need an increase in all rates for Waiver and State Plan services if we are going to be able to continue to hire and retain employees. We have a phenomenal need for providers in our area, we receive referrals every day for individuals and we, as well as all the other providers in our area, simply do not have the staff to take on cases and provide the services. We cannot get nurses or aides at the payrates that we are able to offer at the current reimbursement rates and it is getting worse with every minimum wage increase. We are begging you to please approve this increase and increase all of the home care services in order to save the home health care industry.

#### **Comment received from Janemarie Sowers:**

5160-1-06.1 PASSPORT

I believe the proposed increases are needed and thank you for those increases. I do however have concerns for Personal Care Participant Directed Individual Provider and Choices Home Care Attendant. Personal Care Participant Directed Individual Provider rate remains unchanged at \$3.44/ 15min while the Personal Care Agency rate increased \$9.28 / hour. Was this a mistake? Why were Personal Care Agency given a \$9.28 / hour increase while Personal Care PD Individual Provider did not receive an increase at all?

Choices Home Care Attendant rate is increasing to \$7.73 / 15 min which I agree with but have concerns that this will not be an honored rate by the AAA's as they already do not honor the current max rate of \$6.25 / 15 min. Currently, the Area Agencies on Aging do NOT honor the unit rates that have been negotiated between the individual and the provider per OAC 5160-1-60 (H)(1-4).

5160-1-06.5 HCBS Assisted Living

I agree with simplifying it to Base and Memory Care and increasing the rates.

5160-12-05 Reimbursement: Home Health Services

I agree with these increases

## Hearing Summary Report

### 5160-12-06 Private Duty Nursing

Let me say THANK YOU for these rate increases. I truly believe these PDN rate increases are what families and providers need.

### 5160-46-06 OHCW Program: Reimbursement rate and billing procedure.

I have concerns with Agency and Non-Agency RN's and LPN's not receiving a unit rate increase. No RN or LPN will want to work on a waiver nursing case for more than a few hours. There is no difference in skill between PDN and waiver nursing so the pay rates should be the same. An LPN who works on a waiver nursing case for a 12 hour shift makes \$144.00 less than an LPN who works a PDN case for a 12 hour shift. We have had discussions about this. There needs to be more direction from ODM as to when to bill waiver nursing vs PDN. My suggestion is under 4 hours be billed to waiver nursing and 4 hours and over be billed to PDN.

Furthermore, a waiver non agency LPN only makes \$0.66/ 15 min more than a PCA and a non agency RN only makes \$1.88 / 15 min more than a PCA. That is a slap in the face to those nurses. I support PASSPORT's Choices Home Care Attendants max unit rate of \$7.73 but I have issue with the waiver nursing non agency LPN and RN unit rate being lower than Choices Home Care Attendant rate. Really? Not OK.

### **Comment received from Kevin Beard:**

I am participating today to offer support for the inclusion of a critical access rate in rule 5160-1-06.5, or any final rule addressing new Medicaid reimbursement rates for assisted living. Inclusion of a critical access rate, specifically an additional payment above the base reimbursement rate for facilities serving a significant number of waiver supported residents, will support development of much needed affordable assisted living communities in neighborhoods across the state of Ohio.

Exclusion of the critical access rate could either prevent the development of purpose-build affordable assisted living or significantly limit the locations in which developments are feasible. Our underwriting currently supports development of new facilities exclusively in low-income qualified census tracts - areas in which 50% or more of the households have incomes below 60% of the area median income, or where the poverty rate is 25% or higher – but these tracts are not where the majority of low-income seniors in Ohio live. In fact, only 20% of low-income seniors in Ohio live in such an area.

As you may recall, the recent state budget bill, House Bill 33, included specific rates, including a critical access rate, in the final language which was then vetoed by the Governor. We believe the legislative intent was to increase access to affordable assisted living options for low-income seniors across the state; inclusion of the critical access rate is the way to achieve this. Exclusion of the critical access rate will not only force seniors to leave their neighborhoods to seek necessary care, but it will substantially hamper efforts to expand availability of affordable assisted living options, as so many fewer viable development sites will be available when the potential locations are so severely constrained.

For these reasons, we support inclusion of the critical access rate in the rule. We believe that doing so will meet the legislative intent of HB 33 and better serve Ohio's low-income seniors.

### **Comment received from Sally Fish:**

We ask The Ohio Department of Medicaid to:

## Hearing Summary Report

- 1.) Ensure that agency providers receive an increase in wages that would set the base hourly rate to \$20 an hour;
- 2.) Enforce the \$20 an hour wage increase.

Hb33 Section 261.150 states: "As a result of the COVID-19 pandemic and extraordinary inflationary pressures within the economy, Ohio Medicaid direct care providers have been adversely impacted. The Department of Developmental Disabilities, in collaboration with the Department of Medicaid and the Department of Aging, have included funding in the budget to be used for provider rate increases. Provider rate increases shall be used to ensure workforce stability and greater access to care for Medicaid recipients through increased wages and needed workforce supports."

The Ohio Department of Medicaid needs to remain steadfast in their commitment for the wage increases to go directly to direct care workers. To do so, The Ohio Department of Medicaid needs to include language that would set the base rate for direct care workers to \$20 an hour. While the current language does contain wording which indicates an increase in provider rates, it does not specify the amount of the increase, nor does it indicate the increase being tied to wages. Therefore, we ask that you include language that requires agencies to increase wages to at least \$20 per hour. Without enforcement of these wage increases, Direct Care Workers will continue to be underpaid and leave the workforce for better paying jobs.

### **Comment received from Natalie Wheeler:**

The rate of \$130 does not allow for new construction and investment in today's marketplace. While a rate of \$130 might help stabilize existing facilities, it is still below the market rate.

One implementing the rate add-on allows purpose Bill High Medicaid, high quality, affordable assisted living communities to be built in neighborhoods where Ohioans have lived, worked and raised their families, allowing aging seniors to remain with their social networks in improving their quality of life and care.

Two purpose built, affordable assisted living means Ohioans have independent apartments where they can determine who they invite in their home.

But they also have the safety and services right outside their door in three affordable assisted living saves, the state Medicaid program, 40% over nursing facility costs while providing a high quality of life and more independence for their residents.

### **Comment received from Dave Cocagne:**

We asked you to honor the express provisions of HB 33 and include the critical access rate as another tier and incorporated in the rules package.

Of course, as you know, that's relatively straightforward given the current river framework, as you did with the memory care rate, you can simply recycle one of the existing tiers, which you're no longer using to provide for the critical access rate.

In conclusion, the critical access rate will quickly expand choice and access for seniors.

We urge you to incorporate the critical access rate into the files rules package to ensure that Ohio seniors enjoy that choice without further delay.

## Hearing Summary Report

### **Incorporated Comments into Rule(s)**

Indicate how comments received during the hearing process were incorporated into the rule(s).  
If no comments were incorporated, explain why not.

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#### **In response to comments received from Theresa Esterhazy, Janemarie Sowers, Kevin Beard, Sally Fish and Natalie Wheeler:**

The provider rates proposed are based on the appropriation levels set as part of the final budget bill. Any future rate changes will be based on additional funding appropriated through the legislative process.

#### **In response to comment received from Dave Cocagne:**

The department appreciates the continued dialogue we have had with Silver Birch on this topic. However, as has been communicated since the budget's passage, at this time, the department is solely focused on implementing simple rate increases in order to hit a January 1, 2024 deadline for *all* providers across the board. Additional waiver reform work or more complex rate work will be reviewed and evaluated after January 1<sup>st</sup>.