The CSP rebase workgroup met following the larger workgroup meeting on 9/30/2019 to discuss the workplan that was proposed. Below are some comments and questions from this meeting that we feel need further clarification:

1. It is our understanding that one of the main points of SDCL 28-22 is to identify existing gaps in reimbursement between current methodology and methodology developed with prospective elements resulting from the analysis (see SDCL 28-22-4). These gaps/variances, if any, are then to be reported to the South Dakota Legislature (see SDCL 28-22-5). Additionally, in SDCL 28-22-4 it specifically states, “Rate determination resulting from rate modeling analyses utilizing historical cost report information shall be adjusted in a manner to be applied in a prospective fashion subject to federal requirements”.

   • **Question** – What is DDD’s interpretation of the above sections of the law?

   DDD Response:

   SDCL 28-22-4 can be divided into three major topic areas: 1) Rate Determination; 2) Rate Modeling Analysis; and 3) Adjustment of Rate Determination in a Prospective Fashion.

   1) Rate determination occurs after a rate modeling analysis and any adjustments necessary to reflect anticipated future (prospective) costs. For purposes of the established Rebase Workgroup, rate determination applies to all services (existing and new) delivered within the CHOICES waiver.

   2) Rate Modeling Analysis is described within SDCL 28-22-2, which states *Rate modeling analysis shall include a review of current cost report data, specific service delivery and staffing requirements, training and fidelity standards associated with related service models, current market factors, and current and impending state and federal policies that may impact the cost of service delivery.*

   3) Adjustment of rate determination in a prospective fashion considers impending state and federal policies that may impact the cost of service delivery.

   SDCL 28-22-5 states that if/when any rate variance is discovered between pre-rate determination and post-rate determination, the department shall report the variance to the Governor and Legislature during annual budget hearings.

   • **Question** – Is there anything in these sections that we are not fully understanding?

   DDD Response:

   It seems as if the community support providers are not fully understanding the time, effort, collaboration, analysis, decisions and tasks needed to achieve the rate modeling analysis as described above and within SDCL 28-22-2. CSPs are hopeful SDCL 28-22 will achieve the potential for favorable funding outcomes, which the law is designed to do, however there seems to be a belief that application of 28-22 can be achieved before 2020 Legislative Session. The DDD does not believe this is an achievable outcome that will have a lasting impact. The law is designed to achieve long lasting results; not overnight short-term fixes. Prospectively considering the magnitude and complexity of federal polices alone is a significant and time-consuming task, which deserves a planned out, thoughtful process.
• **Question** – Will the state be completing the Provider Reimbursement Rate Methodology Review Form that indicates difference in current rate methodology and methodology following the analysis? (other service sectors have indicated gaps)

**DDD Response:**

The DDD is not familiar with the Provider Reimbursement Rate Methodology Review Form as described.

• **Comment** – Our committee did not feel that these sections of the law were covered in the work plan proposal discussed at the September 30 meeting. This prompted us to consider if we have the same understanding of the law, or if our perspectives are different. Also, the SB147 Provider Workgroup Meeting Minutes from July 20, 2017 state, "It was also noted by the state that some work may begin and complete in the scheduled year; some work may begin in the preceding year and conclude in the scheduled year. For example, the Department of Social Services indicated at this meeting that they intended to begin their review of substance use disorders in Year 1 despite this group being scheduled for review in Year 2. The Department noted that there are a lot of rates in this group and starting work in Year 1 after DSS' Year 1 group is complete ensures the review will be complete in Year 2." This statement seems to validate our belief that the legislature is expecting to see a gap amount right away for the FY 2020 session as CSP's are scheduled.

**DDD Response:**

The DDD does not share the belief that the Legislature is expecting a CHOICES rate variance in 2020. The law requires that the rate modeling analysis and rate determination occurs at least every five years. We are on pace to comply with the law. Furthermore, rebase workgroup meetings have been attended by Legislative Research Council staff and the DDD has not been informed of issues with the workgroup’s compliance of the law.

2. It was mentioned at the beginning of the September 30 meeting that all CSPs are considered OHCDS organizations. Those of us on the committee understand that we have been considered OHCDS organizations for several years. However, there was some confusion related to this part of the presentation regarding exactly what is out of compliance.

• **Question** – What OHCDS requirements are out of compliance?

**DDD Response:**

The following areas were considered to be non-compliant, or vulnerable, after a legal review of the CHOICES waiver and CMS requirements:

- The State needs a clearer mechanism for paying a provider that does not want to be paid through an OHCDS.
- The payment of a single bundled rate makes it difficult for a beneficiary to exercise freedom of choice, and for the OHCDS to subcontract with outside providers.
The OHCDS is exercising a monitoring and oversight function that is being paid at the service rate, not the administrative rate.

The service costs reported by an OHCDS may differ from the actual payments to the providers.

- **Question** – What are the real risks?

**DDD Response:**

The real risk is that CMS discovers these issues (not only with OHCDS, but other issues discussed during workgroup meetings) and forces our system into compliance with minimal stakeholder input in how to comply. Case in point: For many years incontinence supplies was incorrectly covered within the waiver programs. When CMS discovered this non-compliance, they required coverage of incontinence supplies to be shifted from waiver to the Medicaid State Plan. The mandated shift was quick and lacked a well-planned strategy driven by stakeholders. CMS compliance was achieved but at what cost? Are incontinence supplies services better off today?

The same can happen if we do not address vulnerable areas of the CHOICES program (e.g., OHCDS, freedom of choice, sheltered workshops, HCBS settings, home sizes, and others). Even worse we might find ourselves within a federal lawsuit. Isn’t it better to address these vulnerabilities on our own accord? To take a quote from Bom Bohm, “We know our people better than some bureaucrat sitting in Baltimore.” Agreed.

In order to have long lasting results, which is the intent of the law, we have to take some time to better understand our data, the needs of our participants, providers and workforce, and project the resources we need to comply with CMS requirements and shore up our vulnerabilities. Only then can we bring to the Governor and Legislature a real and accurate rate variance. It takes time.

- **Comment** – There was a lot of time spent on this topic and our committee didn’t feel that we fully understood what the risks are in this regard, nor what the recommendations are to resolve these risks. In any case, further clarification is requested.

**DDD Response:**

Ultimately, it comes down to the appearance (either real or perceived) of our system limiting choice of services and who provides those services. There was a lot of time spent on this topic because a third-party legal expert pointed it out, which assumes CMS is close to also discovering these issues. See the real risks above.

3. Toward the end of the September 30 meeting, there was discussion that this process is a part of a five-year plan. It is our understanding that this process is not a 5-year remodeling plan according to the SDCL 28-22-1, but rather it only requires that an analysis of rate modeling be done every 5 years as one component of the law.
DDD Response:
The rate modeling analysis is required by law to occur at least every five years, as described in SDCL 28-22-1. Rate determination and any variance as a result can only be determined after a rate modeling analysis; therefore, the law involves a process that is to occur at least every five years.

- **Question** – Will the work plan presented take five years to complete and implement?

DDD Response:

No. See proposed workplan shared during September 30th rebase workgroup meeting. The timeline is also reflected in the draft meeting minutes shared with CSPs on October 8th.

- **Comment** – The work plan timelines don’t cover a 5-year period which presented some confusion.

DDD Response:

The workplan timelines do not cover a five-year period. We believe we can achieve the workplan much sooner than five years.

4. It was discussed at the end of the September 30 meeting that a document will be created by DDD covering the concerns that were discussed by CSP workgroup members and potential solutions. There was not too much detail discussed as to what this document will look like.

- **Question** – What will the contents of this document cover?

DDD Response:

The DDD did not commit to creating such a document, however A&M agreed to provide a written summary of the plan/approach to include a listing of the issues raised by providers for more immediate solutions to financial concerns. A&M will also provide a summary of CMS’ expectations related to home size and community integration.

- **Comment** – This was something that all CSP workgroup members felt would be helpful, but we want to clarify what the document will include in terms of contents.

5. The term “rebase” is being used frequently and our workgroup members feel it’s important to clarify definitions because we feel that there are differing views on this term.

- **Question** – What is the definition of rebase according to the state?

DDD Response:

Rate rebasing involves evaluating an existing rate setting methodology and adjusting or updating individual rate components with more current data.

- **Comment** – We realize that the first meeting covered this topic, but at this point in the process, we feel a clearer definition is needed, or at least a discussion revisiting the subject.
6. There was some discussion about children’s HCBS services, although nothing substantial by any means.

- **Question** – Will children’s HCBS services or other service lines (e.g. Family Support, CTS) be considered now, or in future rate analyses?

**DDD Response:**

All CHOICES services are a part of this workgroup’s efforts, including HCBS children. Other service lines will be a part of future efforts.

**DDD Comment:**

The DDD acknowledges a rate variance within the CHOICES reimbursement methodology.

The DDD also recognizes SDCL 28-22 as an opportunity to answer the call of legislators to collaboratively work together as part of a rate modeling analysis and prospective rate determination that will provide the Governor and Legislators with the information they need to make informed decisions about our service delivery system. The DDD understands this is a process, if performed efficiently, that will take nearly two years to achieve. The end result will be an accurate and well-thought-out prospective rate variance that can be confidently presented to policy makers. We’ll have the confidence that the presented rate variance will not only get us closer to closing funding gaps but will also prepare us for impending CMS requirements and prepare our system to deliver a higher quality service to participants. This is the intent of SDCL 28-22.

What about the rate variance for the next two years? What can we do now? The DDD understands these concerns. We should not let these concerns derail us from achieving opportunities as part of complying with SDCL 28-22. The DDD is committed to realizing more shared savings with IHS to help with short-term funding. Because of shared savings, our system benefited from an extra 2.5% inflationary increase this year and one CSP will receive a one-time supplemental payment of $12K this year and even more next year for their efforts to secure IHS referrals. Shared savings with IHS is our best short-term opportunity and the DDD will do everything we can to execute more care coordination agreements.