Appendix A: DHS's Response to CSP Association Feedback in December 2021

The Community Service Provider (CSP) Association submitted final comments and feedback for DHS's consideration on December 6, 2021. The feedback document is included as an attachment to this report – *Attachment A: Final Comments Letter Rate Methodology*.

This document includes DHS's response to the feedback provided by the CSP Association.

Final Wage Recommendations

CSP Feedback

The two most important disagreements we have regarding the final wage recommendations are the inflationary and supplemental pay percentages used in the model. In terms of inflation, we agree that the PPI index is a much better inflationary factor to use, but under the current conditions we feel this is not even adequate. We are in a time of persistent high inflation and an unprecedented shifting in the labor market that has made it extremely difficult to find employees willing to do close contact work. For those employees that are willing; wages are climbing and not expected to pull back. Secondly, a primary concern of members heading into this work was the historical data used for the wage rate buildup. This historical data was prior to the economic impact of the pandemic and the proposed wage recommendations do not sufficiently address these conditions. Ultimately, if the system fails to recognize this, services will continue to fall short of wage growth.

Supplemental pay is critical to CSP wage strategies and the 3.8% used to account for supplemental pay is too low. Providers have reported that their rate of supplemental pay exceeds the proposed rate and our use of supplemental pay in the larger context of recruitment and retention, is critical to this point. CSPs operate 24 hours per day, 7 days per week, which means multiple undesirable shifts must be covered. CSPs require qualified and competent workers for these shifts and the use of pay differentials are vital in the overall strategy of recruiting staff for these positions. Members also feel it important to note, that data was not collected in the methodology process regarding how CSPs use wage differentials and overtime, rather the supplemental pay rate proposed, was taken from national data instead of South Dakota provider experience. Supplemental pay is a major cost of doing business and if the intention, as noted by Guidehouse, is to eliminate the need for supplemental pay by including it in the wage rate buildup, then the proposed rate requires re-evaluation and close monitoring. Understating our use of supplemental pay, and not using South Dakota provider experience in the calculation, will set CSPs up for failure in keeping up with wage competition.

It is also important to note that the State's independent report from Align in June of 2020, highlighted that South Dakota rates are 34% under the national average. This same report also extensively noted the workforce crisis our providers have been experiencing for many years and that wages are a significant factor. The 14.8% increase received last legislative session was a welcomed increase and put a dent in the gap noted in the Align report. However, the rate build-up in this methodology process failed to look at market wages beyond the commonly compared human service sectors. Providers have to compete with the whole of the labor market, and currently, low skilled retail and fast-food positions are once again outcompeting providers whose workforce requires significantly higher skills.

DHS Response

DHS does not agree that the wage assumptions used in the rate study are inadequate to keep up with rising wage costs for providers. The projected 2022 DSP hourly wage assumption used to establish benchmark rates is $18.28. This assumption includes base wages as well as increases due to overtime pay, shift differentials, and other bonuses. The comparable average wage reported by CSPs in FY2019 was $14.72. Thus, the benchmark wage represents an increase of over 24 percent from FY2019 to implementation at the beginning of FY2023. The view of DHS is that this assumption already reflects expectations of aggressive wage growth and that projections of additional wage increases are not justified by additional provider CSP data or national wage indices.

The adequacy of these assumptions becomes even clearer when the rate study's projections of wage growth are placed in the context of overall staff compensation, which also includes benefit costs. The Rate Methodology Workgroup did not express concerns about the rate study's benefit assumptions, because it is apparent that the assumptions involving Employee-Related Expenses (ERE) are highly competitive and reflect allowances for CSP benefit expenditures that significantly exceed spending levels realized by CSPs as a whole in their historical cost reporting. Benchmark fringe benefit percentages have been established between 27.1 and 34.3 percent, depending on the staff type, with most services assuming the highest 34.3 percent fringe percentage for DSPs. By contrast, CSP cost reports from FY2019 indicate an average fringe percentage of 24.9 percent, paid as a percentage of all direct care staff wages. The study's ERE assumptions represent a marked increase over what CSPs have paid historically, and what many of these organizations are covering today.

When DSP wage and benefit assumptions are combined into a single figure of benchmark total compensation, the adequacy of the study's cost assumptions are particularly evident. Hourly DSP total compensation assumed in the benchmark rates is $24.49, which reflects the hourly wage multiplied by an additional 34.3 percent for ERE. In comparison, the average FY2019 hourly DSP total compensation cost is $18.38, which includes the FY2019 average wage multiplied by the additional fringe percentage of 24.9 percent. The difference reflects a growth in total compensation costs of 33 percent for the period, which would assume an annual rate of growth that outpaces any relevant national inflation index available for this period.

DHS acknowledges that there may be individual CSPs who offer wages higher than the benchmark wage. However, the provider survey conducted as part of the rate study also reveals that many CSPs are paying wages significantly lower than the benchmark, suggesting that DHS's wage assumptions are more than adequate for many providers delivering services under the waiver. Additionally, lower and higher CSP wages are not attributable to predictable demographic circumstances such as cost differences in urban versus rural labor markets. For example, the three providers who deliver services in the Sioux Falls market demonstrate substantial variation in average wages paid, with some wages higher, some lower, than the benchmark wage assumption. The provider survey did not furnish evidence for a rate differential, such as a geographic area, that would serve as a defensible basis for recognizing the higher wage costs of some CSPs. In the absence of such criteria, a weighted average wage assumption among all CSPs is the most reasonable basis for a DSP wage benchmark.

Regarding the concern raised as to whether the study's supplemental pay assumption reflects the true percentage of additional wages represented by supplemental pay, DHS has explained in Section 6.2.1 why the provider survey did not attempt to capture these costs. Moreover, while annual cost reporting could potentially offer additional insights into supplemental pay effects and the development of an alternative cost assumption, many providers do not report the requisite information in the cost report fields regarding average starting, mid-range, and high wages for their organizations, even though this wage data could provide relevant points of comparison between base wages and increases to overall wages attributable to supplemental pay effects. In the absence of this data, the percentage developed from the BLS ECEC data represents the most highly defensible assumption to account for additional supplemental pay costs. When viewed within the context of the study's total compensation costs, DHS views this value as sufficient to generate a reasonable portrayal of DSP compensation expenses.

DHS agrees that the study's assumptions around wage growth deserve further review prior to final implementation, especially if the review process yields an opportunity for historical hindsight not available within the timelines of the current study. DHS has drafted considerations on monitoring imminent changes in the HCBS economic environment to determine whether changes in wage growth factors are warranted at the time of implementation. Section 9.4.1 outlines DHS's consideration to continue to monitor growth trend basis including the PPI, BLS supplemental pay, and other industry metrics.

High Acuity Support Needs

CSP Feedback

The rates for supporting people with high medical and behavioral needs is perhaps the most important concern for providers. It has been recognized that the current A3 model does not provide appropriate resources for supporting this population, which is why the special rate process was developed. Initial analysis of the proposed methodology is also showing significant shortfalls in funding for this population. Replacing a funding model recognized by the state as not accurately identifying resource needs for this population, with a new model that does the same, does not make sense. Association members propose the following:

- *CSP workgroup members request that the current special rates be held harmless until a more accurate assessment is developed to address these needs.*
- *The new proposed rate methodology includes the Behavioral Support service, is it possible to also develop a high medical support service? High medical needs were not addressed in the methodology process.*
- *Behavioral challenges exist in all program areas and not just day services. Our members feel the yet to be defined behavioral service should apply to all service lines.*

DHS Response

DHS will consider these requests and determine as a part of the implementation process whether particular rates should be held harmless or transitioned gradually according to other risk corridors. Services addressing behavioral support needs were a dominant concern during the rate study, and high medical needs were not specifically addressed, nor were CSPs surveyed on current personnel resources used to assist individuals with high medical needs. It is possible to develop a medical support service cognate to Behavioral Support, staffed with practitioners qualified to address medical challenges. Identifying appropriate staff types will require further study.

Administrative Costs

CSP Feedback

The two main concerns with this cost component are that it was based on 2019 cost report data and does not reflect the costs associated with implementing the HCBS Settings Rule, or the costs with implementing a fee for service system. While there was discussion at the last rate methodology meeting regarding upfront costs associated with implementing a fee for service *system, there were no specifics discussed on ongoing administrative costs of the new system. This is the same concern with the HCBS Settings Rule. Despite that this rule has been around for some time, there are still items that are not fully implemented, and these will have unforeseen administrative costs. Lastly, for every new regulation (state or federal), or any new initiative that the state would like to promote and encourage, there are coinciding administrative costs to consider. Some possible solutions to consider going forward could be:*

- *Include identification of ongoing fee for service administration costs when upfront fee for service transition costs are identified.*
- *It is our understanding that the proposed methodology will not be implemented until 2023. If this is the case, and the methodology works as proposed (i.e. with the flexibility to be changed as conditions evolve), it seems that administrative costs based on 2019 cost reports would be unrealistic. In other words, this cost component should be updated annually, especially if the implementation doesn't occur until 2023.*
- *Any new administrative rule, state regulation, or federal regulation should require an evaluation of administrative costs.*

In 2011, CSPs incurred a large cut in reimbursement and one of the immediate steps taken by providers was to reduce administrative costs so members could preserve resources for direct care work. This action has been sustained over the years due to the overshadowing workforce crisis, but at the expense of meeting new regulation requirements and competing wages for these important positions. This forced providers to add additional tasks to existing positions or combine administrative positions leading to an overstressed administrative environment. For many years, there has been an unrealistic expectation placed on providers to keep administrative costs to an absolute minimum. While we understand and comply with strict oversight of costs and taxpayer dollars, this should not be at the expense of neglecting quality administrative practices. In short, we are one of the most regulated industries (e.g. DHS/DDD oversight, federal oversight, OSHA, DOH, housing, CQL accreditation etc.) and this has been neglected for many years, and the number of regulations and costs are only increasing. This cycle has to stop and be evaluated annually and with every new regulation or initiative.

DHS Response

The Department does not agree that administrative cost percentage derived from providers' FY2019 cost report is unrealistic when applied to current provider costs or anticipated costs under the proposed rate structure and payment system. While the transition to a fee-for-service system is likely to include additional administrative requirements and associated costs for CSPs, this system, if implemented as benchmarked, would also supply significant additional financial resources for direct service.

DHS is not aware of evidence to suggest that rising administrative costs due to new administrative requirements will necessarily outpace (or keep up with) the precipitous rise in the direct costs used to estimate administrative resource needs. It is important to note that substantial increases to direct service costs in the rate model also entail substantial increases to estimated administrative costs, even though compensation costs for administrative staff are not necessarily increasing as quickly as compensation for the direct care workforce.

DHS does not support the development of an enhanced administrative rate outside the historical costs reported in CSP cost reports, but agrees that post-implementation administrative assumptions should be reviewed using the best and most recent cost report data available. If additional one-time, transitional administrative burdens are identified through the implementation process, the Department's view is that any additional funding approved to support transition should be made available outside changes to administrative factors in the rate models.

Transportation Costs

CSP Feedback

CSP workgroup members feel that transportation needs to be included as a rate component in day services, career exploration, supported employment, and nursing. Each of these services have specific transportation needs separate from residential transportation activities:

- *Career exploration would likely involve multiple travel activities to potential places of employment and utilizing other job type services in the community.*
- *Supported employment certainly involves travel to places of employment and in many cases, travel to multiple job sites daily.*
- *Day services also incurs numerous daily travel activities and can include multiple community activities on any given day.*
- *Despite nursing not being a specific waiver provided service, these departments are critical to overall service delivery for participants. They require multitudes of medical visits, many of which require extensive travel. This level of transportation cost was not adequately addressed in the methodology meetings. If this cannot be accounted for in the methodology due to definitions, we suggest that it be calculated via labor hours identified, and then reduce the current productivity rate to accommodate for these medical visits.*
- *It is our understanding that the residential transportation cost is supposed to cover transportation costs in other program areas. That is not realistic. If this process is to accurately identify true costs of service, then transportation costs will have to be analyzed for each service respectively.*

DHS Response

All non-residential services (day services, supported employment, career exploration) include transportation costs. As indicated in Section 6.3.1, Non-Residential Service Rate Components, Program Support Factor, all non-residential program support factors include a travel and transportation component that includes provider travel where applicable, as well as client transportation when it is provided as a part of the service, according to the service definition.

Children's Rates

CSP Feedback

Some providers in the association serve children and this was not a topic that was discussed during the rate methodology workgroup meetings. These providers have expressed concerns on how the new methodology would apply to children's services. Since this was not a topic of discussion related to the rate methodology workgroup meetings, we respectfully request more information on the impacts of the new system in this regard.

DHS Response

The rate study did not initially contemplate a rate distinction between adult and children's services, and Rate Methodology Workgroup members did not voice concerns about differences between costs incurred serving children versus adults. As a result, relative fiscal impact on child and adult services was not an area of special focus, and the study does not include a specific analysis on impacts to children's services. DHS will review potential impacts on children's services as a part of its implementation activities and will discuss with providers whether distinct service rates or other rate adjustments for children may be warranted.

Shared Living

CSP Feedback

The shared living rates are significantly lower and may have an impact on sustainability of this program. Our provider group expressed financial sustainability concerns from the beginning, but now our main concern is the risk of the program's viability as a percentage of rate reductions will be shared with the independent contractors. Contractors do not know the dynamics of rate setting and will solely react to the revenue loss. Many left jobs to provide this care and now may not find it feasible. Providers will also need to reevaluate the program's fiscal soundness. This program should also be one with a hold harmless for current contracts.

DHS Response

As noted in Section 8.4, benchmark rates in this study were determined on a cost basis. Current Shared Living rates were not formulated on a cost-based reimbursement methodology, so discrepancies between current and benchmark rates are to be expected. DHS may consider introducing risk corridors for the Shared Living program, as outlined under Section 9.4.5.

Implementation Considerations and ICAP

CSP Feedback

As DHS and DDD continue with the rate methodology process, association members would like to be a part of the process regarding implementation considerations suggested at the November 16, 2021 meeting. Additionally, we respectfully request that the ICAP be a part of any future implementation consideration discussions. The ICAP is a foundational piece of the reimbursement structure and has been acknowledged by the state as lacking in adequately identifying needs for certain populations. Again, members feel that all enhanced and transition rates should be held harmless until an accurate assessment tool for these populations is developed.

DHS Response

Based on feedback provided by the Rate Methodology Workgroup during stakeholder meetings in October and November 2021, DHS included a consideration on *ICAP Reassessment* under Section 9.4.3.