disabilityrights WISCONSIN
Protection and advocacy for people with disabilities.

DRW Comments on CLTS Rate-Setting Initiative
Attorney Mitchell Hagopian
August 9, 2018

We appreciate the effort and obvious thought that has gone into this Children's Long Term Support Waiver rate-setting effort. We particularly like the fact that DHS has identified several services (supportive home care and respite) for which there will be several different rates depending on the acuity of the individual child's needs. We also appreciate that several services are not subject to statewide rate-setting—reflecting the fact that certain services, by their very nature, encompass several different items or services (i.e. a "home modification" may range from a simple ramp to installation of an elevator) and trying to set a rate for each conceivable one is not practical. We believe DHS has identified the services that are most appropriate for statewide rate-setting and those that are not.

Rate-setting is a double-edged sword. While there is value in consistency, there is also risk. For some services and some geographic areas, statewide rate-setting will bring rates to levels that will likely increase children's access to providers. That is, obviously, a very positive result. But in other parts of the state the statewide rates will have the opposite effect. When rates are below the current market rate for certain services, they will likely reduce the number of providers and make it more difficult for remaining providers to find qualified employees. Thus, it is critical that the rate-setting process have a robust and easily accessible "exceptions" process whereby local workforce anomalies can be accommodated and care needs that require specialized expertise can be met.

Because we are not a care provider and do not have access to the financial data DHS relied upon in setting these rates, we cannot comment on any specific rates. We defer to counties and the experience they have in paying providers to identify rates that are likely to be inadequate to achieve the goal of universal access to all types of providers.

Tier Determinations

With respect to the tiered rates based on acuity, however, we do think DHS needs to provide more information on how a child will be placed in a tier. We understand that the placement will be based on data drawn from the child's computerized long term care functional screen. But there is a lot of data in that screen. While assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs) will, presumably, figure prominently in the calculation resulting in tier placement, other areas—like need for ongoing intervention due to disruptive behaviors, self-injurious behaviors, aggressive behaviors, or obsessive/compulsive issues, etc.—may also have an impact on whether it will cost more per hour to hire qualified workers to care for a child. It is unclear how—or even if—any of that data is factored into the determination of which rate tier a child is placed. And even within the functional screen data areas that are directly related to supportive home care (SHC) and respite (ADLs and IADLs), there are wide variations in the level of intervention needed to allow the child to complete

MADISON
131 W. Wilson St.
Suite 700
Madison, WI 53703
608 267-0214
608 267-0368 FAX

MILWAUKEE
6737 West Washington St.
Suite 3230
Milwaukee, WI 53214
414 773-4646
414 773-4647 FAX

RICE LAKE
217 West Knapp St.
Rice Lake, WI 54868
715 736-1232
715 736-1252 FAX

disabilityrightswi.org
800 928-8778 consumers & family

activities safely. It is not inconceivable that two children who have a need for assistance with the same three ADLs should be placed in different rate tiers based on the level of assistance needed or because of other factors not included in the data associated with a particular ADL.

Transparency is the key. DHS has indicated that it will be issuing guidelines to Counties regarding how the acuity levels should be set. However, DHS does not plan on releasing those guidelines until October 1, 2018, when it releases the final rates. In other words, as currently planned, there will be no ability for the public to review and comment on the data DHS chooses to consider when making acuity determinations. This is not acceptable. The tier determination guidelines should have been included in the information made available to the public as part of this comment process. Before finalizing the tier rates for SHC and respite, the tier determination guidelines should be made public and be subject to public input and comment. Only after that comment is reviewed and considered by DHS should the guidelines become operational.

Wisconsin's experience in "automating" the "target group" determination for the adult IDD population should serve as a cautionary tale here. DHS programmed that determination using flawed data from the functional screen, resulting in numerous problems that have yet to be solved. Had the process been made known to the public in advance, many, if not all, of the problems would at least have been identified and, hopefully fixed before implementation. DHS should not repeat that mistake here.

Exceptions/Outliers

As indicated above, once generally acceptable statewide rates are set through a transparent process, an exceptions process needs to be created that allows individual children (through their parents) to request higher rates based on individual circumstances. Although it appears that an exceptions ("outliers" in DHS parlance) process will be developed by DHS, none has been proposed as part of this public information process. Worse, DHS does not plan on releasing the outlier policy until October 1, 2018, when it releases the final rates. This is not acceptable. As with the acuity guidelines, DHS must allow public comment and input on the outlier policy before it is implemented.

The exceptions policy should apply in at least two situations. First, an exception should be considered if the child's needs require specialized care or handling that is not typically available by care-workers paid at the tier rate within which the child has been placed. Second, an exception should be considered if the child can demonstrate by clear and convincing evidence that the local market is such that it is unreasonably difficult to hire and retain workers at the tier rate within which the child has been placed. In either of these situations, the child could be moved to a higher tier (if one or more is available) or, an individualized rate can be set if the child's needs cannot be met by care-workers paid at the highest rate available for the service (whether or not the service is "tiered").

If the rate-setting process has been done accurately then there should not be an overwhelming need for people to resort to the exceptions process. But there will, invariably, be individuals who cannot find qualified workers because of their unique care needs, local market conditions or a

combination of both. The rate-setting process needs to recognize this reality and be able to fairly respond to it.

Implementation Should be Delayed

It is obvious from the comments provided to DHS at the forums that a January 1, 2018 implementation date for these rates, the acuity guidelines and the outlier policy is not feasible. Neither the acuity guidelines nor the outlier policy have been developed. It is apparent that some of the proposed rates are too low to sustain even the current, limited, provider base for some services. DHS has, obviously, worked diligently to comply with the CMS corrective action plan, but these are complicated issues, and this is a work in progress. It is by no means a finished product.

We urge DHS to issue a second draft of the rates, and initialdrafts of the acuity determination guidelines, and the outlier policy by October 1, 2018. It should then allow additional public input (at the very least, a 30-day written comment opportunity) and issue the final rates and associated policies on acuity and outliers, on January 1, 2019. Implementation of the rate structure should begin on March 1, 2019. This is a delay of only one quarter, but it will ensure a much better product.

Unanswered Questions

The material distributed so far does not discuss appeal rights associated with either of these determinations. Because these determinations impact a child's choice of (and possibly even access to) a provider, we believe both determinations (acuity and outlier) should be subject to notice of action and appeal by the child's family or the provider.

Again, we appreciate the thoughtfulness of this effort and look forward to receiving more information on the tier determination and exception processes.