

Negotiated Rulemaking Meeting Minutes
Tuesday, July 21st, 2015 2:00PM – 2:30 PM (MDT) 1:00PM – 1:30PM (PDT)
Negotiated Rulemaking Docket No. 16-0318-1501

Meeting called to order at 2:00 PM

Introductions: Facilitator: Beth Kriete, Bureau Chief, Bureau of Long Term Care

Division of Medicaid Representative: Alexandra Fernández, Alternate Care Coordinator, Bureau of Long Term Care

Division of Welfare Representatives: Camille Schiller, Program Manager; Callie Harrold, Program Specialist

I. Purpose of Meeting as stated by Beth Kriete

Advocates representing Idaho's disabled residents have requested the Department of Health and Welfare review the Personal Needs Allowance (PNA) amounts used in the financial eligibility calculation for those Medicaid waiver participants who reside in the community and are responsible for their rent or mortgage expenses. The Department has determined that while the Supplemental Security Income (SSI) figure is adjusted annually by the Social Security Administration to account for cost of living increases, it has not kept pace with the increase of housing and utility expenses in Idaho. The Department has proposed a change in the PNA figure from 150% of the federal SSI level to 180% of the SSI level.

II. History of the Proposed Rule Change as stated by Camille Schiller

In reviewing the options for increasing the PNA amount, we looked at housing expenses across Idaho and it was determined that an increase in the allowance by approximately \$200.00 would be sufficient to rent/own a reasonably priced home/apartment within the limitations of the allowance. Because a flat rate increase to the current amount would not be sustainable, we are proposing to raise the PNA amount for those responsible for rent or mortgage to 180% of the federal SSI amount. This will result in a decrease of \$219 per month in a participant's Share of Cost for the current fiscal year. With the annual COLA increase that occurs for the SSI amounts, this figure will increase each year in January. This proposed change to the financial calculation provides for approximately \$1300 per month for home and living expenses for the 2015 calendar year.

The Department must consider the political environment in which this request will be made. Personal responsibility is an important concept that the State of Idaho holds in high regard and the requirement for those receiving benefits to contribute to their well-being and health care costs must also be weighed when requesting an increase in the allowances that are made for participants. We believe that this proposed increase (150% increased to 180%) will be accepted by the legislature.

III. Open Forum Comments and Questions

- **Proposed PNA Figure.** Stakeholders commented on the amount of the proposed PNA increase and inquired if the Department would consider a higher amount than proposed.

- **Stakeholder Engagement.** One stakeholder inquired about the Department's process for notifying impacted participants of rulemaking.
- **Additional Feedback.** There was general discussion regarding Idaho's Personal Needs Allowance figure in comparison with other states' Medicaid programs, the fiscal impact of the proposed change, and the Department's methodology for counting income and deductions for program eligibility.

Please see the Negotiated Rulemaking – Comment Summary for a review of verbal comments received during the meeting in addition to the written comments received regarding the proposed rule and responses.

Meeting was adjourned at 2:30 PM.

Negotiated Rulemaking - Comment Summary
DOCKET NO. 16-0318-1501

Verbal Comments from July 21, 2015, Written Comments Submitted Post-Meeting, and Responses

Verbal and written comments were submitted by the following individuals/organizations: Randy Nilson; Courtney Holthus, DisAbility Rights Idaho; Joyce Stroud

W-Written V-Verbal	Comment	Response	Rule Change
V	DisAbility Rights Idaho supports the proposed rulemaking.	The Department thanks DisAbility Rights Idaho for their support of this rulemaking.	No policy change required.
V/W	Will the Department consider increasing the proposed Personal Needs Allowance figure higher than 180% of the federal SSI amount? The Department should consider a figure of 300% of the federal SSI amount.	The Department has determined that the proposed figure of 180% is adequate to support participant needs.	No policy change.
V	The Department should mirror the IRS guidelines regarding calculating and counting deductions.	The proposed rule change does not impact income calculation guidelines or other deductions utilized in the eligibility determination process. The proposed rule change only impacts the Personal Needs Allowance figure used in the calculation of participant Share of Cost.	No policy change.
V	There are many states with a much higher Personal Needs Allowance than Idaho.	Medicaid programs vary from state to state. Idaho's waivers are able to serve a higher number of individuals by requiring that participants contribute towards the cost of their services.	No policy change.
W/V	"Idaho allows the Medicaid participant to have an income of \$2199 to qualify for Medicaid but only allows participants to keep half of their income. This is only a portion of the income that the Medicaid participant used to remain in their home before they were on Medicaid or while they were on Medicaid for worker's with disabilities [sic] program. Medicaid is	Medicaid is a program designed to provide medically necessary services to low-income individuals. By utilizing a higher income limit for waiver participants and requiring some individuals to contribute to the cost of their services, the program can serve a larger number of individuals.	No policy change.

	supposed to be a program for the disabled or for people with low incomes. I don't believe Medicaid requires the disabled person to be low income.”		
W/V	Only two individuals attended the negotiated rulemaking meeting. How is the Department advising participants of the opportunity to comment on proposed rules? The Department should mail a notice to participants who pay a share of cost and may be interested in providing feedback on the rulemaking.	<p>The Department follows the required stakeholder notification process by publishing the notice of proposed rulemaking in the Administrative Bulletin. In addition, an announcement was posted on the Medicaid Home Care webpage and was provided to the Personal Assistance Oversight Committee, which consists of providers, participants, and advocacy groups.</p> <p>The Department will explore other mechanisms to reach participants impacted by the proposed rule change for the public comment period in October.</p>	No policy change.
W/V	What is the fiscal impact of this rulemaking?	The projected fiscal impact of this change totals approximately \$1,524,200 per year in increased claims costs due to reduced participant Share of Cost for waiver services. This results in an increased cost of approximately \$443,400 per year in state general funds and \$1,080,800 in federal dollars.	No policy change.
W	“Participants were not required to participate in the cost of (HCBS) waiver services unless income exceeded (300%) SSI prior to January 01, 2010. Participation in the cost of waiver services was fundamentally altered with temporary rule change to IDAPA 16.03.10.020.01.b (04-07-11), and was in violation of ‘maintenance of effort’ provisions of the Patient Protection and Affordable Care Act, as well as undermining legislative intent of 16.03.10 Medicaid Enhanced Plan Benefits”	The Department disagrees that participant contribution to the cost of waiver services is a violation of the Affordable Care Act. The current structure for participant contribution has been approved by the state legislature and by the Centers for Medicare and Medicaid Services (CMS).	No policy change required.

W	<p>“Budget cuts violate the ADA and Olmstead when significant funding cuts to community services create a risk of institutionalization or segregation, specifically where budget cuts require the elimination or reduction of community services specifically designed for individuals who would be institutionalized without such services.”</p>	<p>The proposed rulemaking does not constitute a budget cut. Rather, if approved by the legislature, it will reduce the monthly Share of Cost for waiver participants responsible for rent or mortgage by approximately \$219 per month (based on projections from this calendar year’s data).</p>	<p>No policy change required, not relevant to this rulemaking.</p>
W	<p>“Current policy of the Idaho Department of Health and Welfare violates the public entity’s obligation to provide services to individuals with disabilities in the most integrated setting appropriate to their needs and to avoid placing individuals at risk of institutionalization.”</p>	<p>This comment is unrelated to the current proposed rulemaking.</p> <p>The Department disagrees with this comment.</p>	<p>No policy change required.</p>
W	<p>“I am seeking information as to whether the DHW has sought resources available to support the implementation of :</p> <ol style="list-style-type: none"> 1. Community First Choice (CFC) option severe mental illness 2. Dual Eligibles 3. 1915(i) State Plan option 4. Money follows the Person grants” 	<p>This comment is unrelated to the current proposed rulemaking.</p> <p>Idaho does not currently operate a 1915(k) program (Community First Choice). Idaho offers a Medicare-Medicaid Coordinated Plan for dual eligibles, 1915(i) state plan option services for individuals with developmental disabilities, and the Idaho Home Choice program under a Money Follows the Person grant for individuals residing in institutions who wish to transition to community settings.</p>	<p>No policy change required, not relevant to this rulemaking.</p>
W	<p>“Need for a Comprehensive Standardized Objective Assessment Instrument to be developed or adopted in order to more effectively determine both the Level of Care and to identify individuals’ needs as well as the services and supports necessary for them to succeed in an integrated setting. Discretionary and inaccurate assessments are resulting in disparate treatment or disparate impact.”</p>	<p>This comment is unrelated to the current proposed rulemaking.</p> <p>The Department utilizes a standardized tool to determine Level of Care and to identify unmet needs. The Department has in place quality assurance activities to ensure appropriate utilization of this tool.</p>	<p>No policy change required, not relevant to this rulemaking.</p>

W	“Privatization promotes or relies upon segregation of individuals with disabilities in private facilities or programs, and lacks agency oversight with a plan for demonstrated success in actually moving individuals to integrated settings.”	This comment is unrelated to the current proposed rulemaking. The Department disagrees with this comment.	No policy change required, not relevant to this rulemaking.
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