

**SUMMARY OF AND RESPONSES TO PUBLIC COMMENTS  
REGARDING  
PROPOSED WAIVER AMENDMENTS TO  
IDAHO'S ADULT DEVELOPMENTAL DISABILITIES § 1915(c) WAIVER  
AND  
IDAHO'S AGED AND DISABLED § 1915(c) WAIVER**

On November 15 and 16, 2016, the Department published its intent to submit waiver amendments for Idaho's Adult Developmental Disabilities §1915(c) Waiver and Idaho's Aged and Disabled §1915(c) Waiver to the Centers for Medicare and Medicaid Services (CMS). The Department proposed and requested public input regarding the following changes:

- Changes in methodology to reimburse residential habilitation providers;
- Clarifications in methods to reimburse providers of environmental accessibility adaptations and specialized medical equipment and supplies in only the Adult Developmental Disabilities § 1915(c) Waiver;
- An increase to the unduplicated number of participants served in only the Adult Developmental Disabilities § 1915(c) Waiver; and
- Changes to Service Area of the Medicare-Medicaid Coordinated Plan in only the Aged and Disabled § 1915(c) Waiver.

The Department received a total of 32 timely comments from residential habilitation providers, case managers/coordinators, a provider association, an advocacy group, a certified family home provider, and an accounting and financial services provider.

All timely comments related to the change in methodology to reimburse residential habilitation providers. The Department did not receive any comments regarding the following changes:

- Clarifications in methods to reimburse providers of environmental accessibility adaptations and specialized medical equipment and supplies in only the Adult Developmental Disabilities § 1915(c) Waiver;
- An increase to the unduplicated number of participants served in only the Adult Developmental Disabilities § 1915(c) Waiver; or
- Changes to Service Area of the Medicare-Medicaid Coordinated Plan in only the Aged and Disabled § 1915(c) Waiver.

A summary of the public comments the Department received and our responses to the comments follow. Upon submission of the proposed changes regarding the residential habilitation reimbursement methodology, this summary document and a complete copy of each timely comment will be forwarded to CMS.

***Concerns Related to the Comprehensive Rate Methodology***

Type	Subject	Comment	Response
Written	Concerns Related to Alignment with the Arizona "Brick" Model	<p>Commenters expressed concern that the proposed residential habilitation rate setting methodology deviated from the recognized and validated Arizona "Brick" model.</p> <p>Additionally, some commenters suggested that, by not adhering to the Arizona "Brick" Model, the Department failed to comply with federal requirements, Idaho legislative instruction, and Idaho administrative rules.</p>	<p>Thank you for your input. The Department believes that the rate setting methodology set forth in the proposed waiver amendments is consistent with the Arizona "Brick" model.</p> <p>Additionally, the Department believes that the rate setting methodology in the proposed waiver amendments were developed in compliance with relevant federal requirements. The Idaho legislature has not enacted legislation or approved regulations requiring the Department to use the Arizona "Brick" model for setting residential habilitation provider rates. Specifically, 56-118, Idaho Code states the Department shall "implement a methodology for reviewing and determining reimbursement rates to ... residential habilitation agenc[ies] services by rule." Idaho Administrative Code (IDAPA) 16.03.10.037, as approved by the Idaho legislature, sets forth the reimbursement method described in the proposed waiver amendments.</p> <p>The Department has scheduled a meeting with the developer of the Arizona "Brick" model and members of the Idaho Association of Community Providers to discuss the details of the model's approach and these concerns in more detail.</p>

Written	Concerns Related to Cost Survey Validity	<p>Commenters expressed concern that the cost survey used to establish the reimbursement rates for residential habilitation providers was flawed. Specifically, the commenters stated that the cost survey request form was antiquated, difficult to understand, and inadequate to capture all appropriate program-related costs and general and administrative costs. Commenters suggested that additional training was needed to ensure providers reported accurate information.</p> <p>One commenter suggested that the methodology did "not adhere to the fundamental principles used in developing a fee-for-service model."</p> <p>Overall, commenters recommended the Department engage an independent cost survey consultant to review the validity of the survey and make recommendations for improvement.</p>	<p>Thank you for the recommendation. While the Department does not agree that the survey methodology was flawed, in the spirit of cooperation and in order to address the commenter's concerns, the Department will engage the services of a third-party independent consultant to review the process, methodology and results utilized in the 2016 cost survey.</p>
Written	Suggestion to Review Specific Federal Guidance	<p>One commenter suggested that the Department review CMS training webinars related to rate setting methodologies for additional guidance.</p>	<p>Thank you for the recommendation. The Department will review the CMS training webinars prior to submission of a revised rate setting methodology for residential habilitation providers.</p>
Written	Concern Rates Predetermined by Department	<p>One commenter suggested that the results of the cost survey were predetermined by the Department to implement a 5% rate decrease from rates in effect prior to February 2016.</p>	<p>The Department categorically denies that the rates were determined prior to the 2016 cost survey. The Department has established the proposed rate setting methodology and corresponding rates in accordance with federal and state requirements.</p>

Written	Concerns Related to Cost Survey Triggers	<p>Commenters requested the Department include triggers for when a cost survey will be conducted in the future, such as changes in federal and state regulations, including changes in wage requirements, changes in the Affordable Care Act, and a 3% or greater increase over the most recent cost survey in the wage basis for direct care staff. Additionally, commenters recommended that a cost study be completed no less than every 5 years.</p>	<p>Thank you for your recommendations. However, the Department is not able to include provisions in our waiver that are not supported by our existing rules.</p> <p>Currently, Idaho Administrative Code (IDAPA) 16.03.10.037 requires the Department to review reimbursement rates and conduct cost surveys when an access or quality issue is identified.</p> <p>The Department is willing to discuss modifications to cost survey triggers. However, implementing such changes will require new rule authority. The Department anticipates initiating negotiated rulemaking and is open to further discussion at that time.</p>
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***Concerns Related to the Individual Components Used to Establish the Base Rate***

Type	Subject	Comment	Response
Written	Concerns Related to BLS Occupation Title for Direct Care Workers	<p>Commenters expressed concern regarding the Department's classification of residential habilitation direct care workers as Personal Care Aides (Bureau of Labor and Statistics Idaho Occupation Title 39-9021) and indicated that this classification did not properly reflect the services provided by residential habilitation direct care workers, including assisting with skills training, addressing violent and combative behaviors of participants, completing paperwork related to participant progress, attending training sessions.</p> <p>The commenters suggested other BLS occupation titles would better reflect the services provided by residential habilitation direct care workers, including Psychiatric Technician, Home Health Aide, Psychiatric Aide, Nursing Assistants.</p> <p>Some commenters also recommended the Idaho Division of Human Services – Developmental Disabilities Technician as an appropriate title.</p> <p>Several commenters suggested that the Department use a weighted combination of the three most relevant BLS occupation titles as follows:</p> <ul style="list-style-type: none"> <li>• 31-1013 – Psychiatric Aide – 43%</li> <li>• 31-1011 – Home Health Aide – 28.5%</li> <li>• 39-9021 – Personal Care Aide – 28.5%</li> </ul>	<p>Thank you for your input and recommendations. The Department is committed to identifying the most appropriate BLS occupation title for residential habilitation direct care workers.</p> <p>While no BLS title is an exact match, the Department believes that the work of a Personal Care Aide best aligns with the work completed by residential habilitation direct care workers. Nursing Assistants and Psychiatric Technicians require higher levels of both supervision and education, including the requirement of a postsecondary non-degree award. Under 42 C.F.R. 484.36, Home Health Aides also require higher levels of supervision and training, including classroom and supervised practical training totaling at least 75 hours.</p> <p>The Department does not have the authority to use Idaho Division of Human Services occupation titles and wages. Idaho Administrative Code (IDAPA) 16.03.10.037.04.a limits the Department's authority to the use of a comparable BLS occupation title or the weighted average hourly rate derived from cost survey results.</p> <p>Idaho Administrative Code (IDAPA) 16.03.10.037.04.a requires wages to be identified on the BLS website when there is "a comparable occupation title for the direct care staff." This rule requires the Department to identify one occupation title and does not provide the necessary authority for the Department to combine two or more occupation titles.</p>

Written	Concerns Related to Staffing Shortages	<p>Several commenters expressed concern that the proposed rates would reduce quality of care and access to services by making it difficult for residential habilitation agencies to recruit, retain and promote high-quality direct care workers.</p> <p>Commenters indicated that the proposed rate was insufficient to allow residential habilitation agencies to remain competitive in marketplace against temp agencies, retail, fast food, call center, and custodial jobs.</p> <p>Several commenters suggested that the Minimum Wage increase in Washington State would make it more difficult hire employees in Idaho’s border communities.</p> <p>Commenters suggested that staffing shortages would result from (or be exacerbated by) the proposed rates because agencies would be required to reduce the pay of current direct care workers and may not be able to pay overtime wages (necessary because of high vacancy rates in the industry).</p> <p>Some commenters also noted staffing shortages would in-turn require increased caseloads for the workers that remained. These increased caseloads could impact quality of care because direct care workers and supervisors are tired and have less time for each individual participant.</p> <p>Other commenters noted that participants’ progress may be hindered by staff turnover.</p>	<p>The Department shares commenters’ concerns regarding adequate reimbursement to address direct care staffing shortages.</p> <p>The Department will delay implementation of the new rate setting methodology to allow the Department time to review the recently released BLS May 2016 State Occupational Employment and Wage Estimates for Idaho and to determine whether changes to direct care staff wages should be adjusted based on the updated information.</p>
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Written	Concerns Related to Single Wage Basis	One commenter recommended that the Department establish a separate wage basis for high-support direct care workers and intense support direct care workers because different skill requirements should be compensated appropriately.	Thank you for your recommendation. Establishing this type of change would likely require new state rule authority. The Department is open to discussing this further with providers in the context of negotiated rulemaking.
Written	Concerns Related to Overtime Costs	<p>Several commenters expressed concern that FLSA overtime costs, resulting from the implementation of new Department of Labor (DOL) regulations, were not properly reflected in the proposed rates.</p> <p>Other commenters suggested that paid overtime should be projected to cover future overtime costs to the providers.</p>	Thank you for your input. Given the nationwide federal injunction preventing the new DOL overtime regulations from taking effect, the Department believes that it is not appropriate to increase provider rates for this concern at this time. However, the Department will continue to monitor this issue.

Written	Concerns Related to the Calculation of Program-Related Expenses (PRE) and General and Administrative (G&A) Costs	<p>Commenters expressed concern that the Department's proposed rates did not accurately capture all PRE.</p> <p>Specifically, commenters suggested that PRE costs were not accurately accounted for because:</p> <ul style="list-style-type: none"> <li>• Use of a “normalized unit” derived from MMIS only reflects consumer usage not total staff time required to provide care;</li> <li>• Training costs did not accurately reflect differing costs to train “high supports” direct care workers and “intense supports” direct care workers; and</li> <li>• Providers did not correctly report PRE costs in the 2016 cost survey.</li> </ul> <p>Additionally, by using the existing survey data to calculate PRE and G&amp;A, commenters felt that these costs were capped at the current level.</p> <p>Commenters recommended that PRE and G&amp;A costs should be calculated as a percentage of direct care wages. Commenters felt this methodology would allow PRE and G&amp;A costs to move as direct care wages move.</p>	<p>Thank you for your input. The Department believes it made reasonable efforts to ensure PRE and G&amp;A were accurately captured in the 2016 cost survey. In preparation for the cost survey, the Department hosted a series of in-person meetings with the Idaho Association of Community Providers to develop the cost survey and ensure the survey captured appropriate costs for residential habilitation providers. The Department’s contractor held on-line webinars to train providers how to complete the cost survey, and encouraged providers to ask questions during these sessions. Webinars were recorded and posted electronically for future viewing and reference.</p> <p>Idaho Administrative Code (IDAPA) 16.03.10.037.04.c requires the Department to rank PRE and G&amp;A survey results by provider and use the costs at the seventy-fifth percentile in setting the reimbursement rate. The Department is working to engage a consultant to provide feedback on our methodology.</p>
Written	Concerns Related to the Use of Costs at the 75 <sup>th</sup> Percentile	<p>Commenters suggested that the 75th percentile cutoff for PRE and G&amp;A costs was flawed. Specifically, commenters suggested that the top 25% of providers, provide more than 25% of the services to Idaho waiver participants. By excluding the top 25% providers' costs, commenters say that the State may be negatively impacting more than 25% of the services provided to waiver participants.</p>	<p>Thank you for your input. Idaho Administrative Code (IDAPA) 16.03.10.037.04.c requires the Department to rank PRE and G&amp;A survey results by provider and use the costs at the seventy-fifth percentile in setting the reimbursement rate. The Department is unable to establish rates in a manner that is outside of the legally prescribed method.</p>



Written	Concerns Related to the Affordable Care Act	Commenters expressed concern that future Affordable Care Act regulatory costs were not reflected in the proposed rates.	Thank you for your input. The Department will continue to monitor this issue as the legislative and regulatory landscape continues to change.
Written	Concern Related to Rate Limitations	One commenter suggested that the Department could address concerns that higher rates will not lead to higher direct care worker wages, by using a rate with a limitation on how much can be used on costs other than wages and benefits.	Thank you for your recommendation. The Department will consider future rulemaking to address this issue.

***Concerns Related to the Impact of Proposed Rates on Participant Rights and Access***

Type	Subject	Comment	Response
Written	Concerns Related to the Extrapolation of the High Supports Rate	<p>Commenters expressed concerns regarding the method and ratios used by the Department to extrapolate the base rate into the high supports service rate.</p> <p>In general, commenters felt that the 1:2 staff-to-participant ratio for high supports (which resulted in the high supports rate being one-half of the intense support rate) did not accurately reflect actual staffing ratios.</p> <p>Commenters suggested that the rate resulting from the proposed 1:2 staff-to-participant ratio does not even cover wages and ERE costs of 1:1 staffing for high-support participants and would:</p> <ul style="list-style-type: none"> <li>• Financially constrain residential habilitation agencies' ability to provide one-to-one high supported living services;</li> <li>• Limit high-support participants' ability to have alone time, which could lead to increased behavior issues;</li> <li>• Limit high-support participants' option to live alone or with an intense support participant.</li> </ul> <p>Commenters pointed to providers' obligations to optimize participant's autonomy under 42 CFR 441.301(c)(4)(iv) and 42 CFR 441.710(a)(1)(iv), suggesting that these rates would force provider's out of compliance with federal regulations.</p> <p>Commenters stated that the rate resulting from the proposed 1:2 staff-to-participant ratio does not accurately capture fixed training and G&amp;A costs.</p>	<p>Thank you for you input. The Department shares your concerns. To address these concerns, the Department will survey providers to determine actual ratios of staff-to-participants during a typical day. The Department is collaborating with the Idaho Association of Community Providers to develop a tool to collect relevant ratio information from providers and will schedule three webinars to provide instructions for completing the survey.</p> <p>The Department also intends to establish an exceptions process to address this concern for participants with high support needs who live alone or in other circumstances that require one-to-one staffing. This process will allow adequate reimbursement for these participants' services.</p>

Written	Concerns Related to Participant Access	<p>Several commenters indicated that the proposed rate may be insufficient to financially sustain the provision of high-supports and hourly services to participants.</p> <p>Several commenters expressed concern that the proposed rates would reduce access to services because lower rates would not be sufficient to sustain smaller providers resulting in their insolvency.</p> <p>One commenter suggested that intense-support participants would face institutionalization in jails, hospitals and mental health facilities due to providers' inability to provide transitional support in and out of these situations.</p>	<p>Thank you for your input. The Department shares your concerns regarding participant access. Pursuant to Section 1902(a)(30(A) of the Social Security Act, the Department must ensure that payments are consistent with “efficiency, economy and quality of care” and are sufficient to “enlist enough providers so services are available to Medicaid participants to the same extent such services are available to the general population in the geographic area.”</p> <p>The Department is committed to working with providers to establish sufficient residential habilitation reimbursement rates. As previously discussed in these responses, the Department has committed to:</p> <ul style="list-style-type: none"> <li>• Meet with the developer of the Arizona “Brick” model and members of the Idaho Association of Community Providers to discuss the details of the model’s approach;</li> <li>• Engage the services of a third-party independent consultant to review the process, methodology and results utilized in the 2016 cost survey;</li> <li>• Review the CMS training webinars related to rate setting methodologies;</li> <li>• Initiate negotiated rulemaking to discuss modifications to cost survey triggers;</li> <li>• Delay implementation of the new rate setting methodology to allow the Department time to review the recently released BLS May 2016 State Occupational Employment and Wage Estimates for Idaho;</li> <li>• Monitor federal statutory and regulatory change; and</li> <li>• Survey providers to determine actual staff-to-participant ratios during a typical day.</li> </ul>
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***Unrelated Concerns***

<b>Type</b>	<b>Subject</b>	<b>Comment</b>	<b>Response</b>
Written	Concerns Related to Housing Costs	One commenter expressed concerns regarding the costs to maintain a reasonable living environment for the participants – citing housing availability and costs.	<p>Thank you for your input. While the Department shares your concerns, under 42 CFR 441.310(a)(2), the Department is generally prohibited from claiming federal financial participation for the costs of room and board.</p> <p>This comment is outside the scope of the proposed waiver amendments.</p>
Written	Concerns Related to Certified Family Homes	One commenter requested copy of the methodology used to determine CFH traditional DD waiver rates that have not had increase since July 1999.	This comment is outside the scope of the proposed waiver amendments.