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### ***Presentation to the Rate Review Committee - March 2017: SLS Rate Structural Problems***

The current rates used in the SLS waiver do not adequately meet the needs of people with Intellectual and Developmental Disabilities (I/DD) receiving services. The more significant problem is Colorado's use of an annual funding methodology that disallows a true planning process to address individual needs

#### **The Supports Intensity Scale (SIS)**

In 2004 Colorado received a directive from the federal Centers for Medicare and Medicaid Services (CMS) to establish an accountability system to identify how each Medicaid dollar was spent on a specific Medicaid client for an approved service. The state ultimately chose to use the Supports Intensity Scale (SIS). The SIS is a needs assessment tool that is designed for people with IDD. The SIS was developed for care planning, not as a means of setting tiers, rates or budgets for care. The state was warned about the need to make many changes/adjustments to the tool to adopt it for this process. Not all those recommendations were followed.

In its current use, the SIS is used to assign a needs rating from a Tier 1-Tier 6. There are additional adjustments that infrequently result in a higher rate – sometimes referred to as a level 7 and/or an outlier. The I/DD waivers do not re-assess individuals at regular intervals, even if an individual's needs and/or circumstance have changed. Our advocacy experience shows that the SIS tends to categorize needs in the very lowest tiers (1-2), even when it is obvious that the individual requires significantly more care.

Advocacy groups have met many times with the Department and clearly demonstrated through case studies that the SIS, as currently used in Colorado, is wholly inadequate in assessing the needs of people with IDD. The pressure from multiple advocacy organizations across Colorado resulted in new legislation mandating the replacement of the SIS with a more comprehensive assessment tool. It is unknown what the replacement tool will be and how that may affect funding.

#### **The Service Plan Authorization Limit (SPAL)**

The tier rating system based on the SIS is called the SPAL. It is used to determine the total annual funding amount for the individual. In addition to the SPAL, rates are set for each service type available in the SLS waiver. The annual SPAL funding limits increase as the SIS number increases. Higher SPAL numbers can also result in higher rates for the same services (see charts below).

When the SIS and SPAL were implemented, it is believed that the state backed into the rates and annual limits based on available funds in 2006. The state also placed limits on the amount of some

services people can use. For example, the state decided that people could not use more than 24 hours per week of day habilitation services.

The HCBS SLS waiver is the only waiver that uses the SPAL methodology. No other Colorado Medicaid waiver sets a spending cap on needed services. The annual plan amount in all other waivers is determined on individual needs. The implementation process using the SPAL results in inadequate funding for the support services individuals require to live safely.

**The Imperative for Rate Review**

To be effective, the Rate Committee must review both the rates and the SPAL methodology to adequately assess the rate impact on the lives that depend on IDD waiver programs. Even with sound rate assessment and increases, the utilization of the SPAL negates the effectiveness of the services. When an individual qualifies for a DD waiver, the SIS level identifies the maximum limit for annual spending. Case Managers help the individual identify the services they need but are then forced to use the SPAL limits and prevailing rate structure. If the individual’s services needs are higher than SPAL limit, the amount of service has to be reduced to “back into” SPAL limits. Most plans (especially in SLS) include numerous service categories (and service rates).

The figures below are the current SPAL limits for the SLS waiver as published on the HCPF website. The overall service plan limit is \$45,500. The difference between the SPAL limit and the overall limit of \$45,500 is to allow access to technology or home modification outside the SPAL.

Table A      SPAL Levels Based Upon SIS Assessment

Level 1	\$13,219
Level 2	\$17,673
Level 3	\$19,882
Level 4	\$22,867
Level 5	\$27,524
Level 6	\$36,181

Table B      Example of Service Rate Based Upon SIS Assessment

Level	Service Description	Tiered Rate	Unit	Hourly Rate
Level 1	Supported Community Connections	2.87	15 Minutes	11.48
Level 2	Supported Community Connections	3.14	15 Minutes	12.56
Level 3	Supported Community Connections	3.54	15 Minutes	14.16
Level 4	Supported Community Connections	4.07	15 Minutes	16.28
Level 5	Supported Community Connections	4.90	15 Minutes	19.60
Level 6	Supported Community Connections	6.44	15 Minutes	25.76

In this example, the hourly rate for a Level 1 is \$11.48. The minimum cost to the agency employer is an hourly wage plus administrative costs of at least 12-20%. Therefore, an agency would only be able to pay a staff member \$9.55 per hour (with no benefits) just to break even and only if they can keep administrative costs to 20% or below. In Colorado’s employment market, there are few qualified

candidates for this skilled work who are willing to accept such a low wage. This problem has led to cases of abuse and neglect when unqualified workers are selected to provide care.

The harmful effects of this funding methodology can be seen when examining the Individual Plans (IPs) that set out the services required to support the person with a disability. Other waiver programs lay out the needs and match a set of services to meet them. The amount of services required is not compromised by a SPAL, as it is in the SLS waiver. Under the SLS waiver, the individual is assigned an annual spending limit (SPAL) that is identical to hundreds of other people. There is no accommodation for each person's very individual needs. People are forced to do without needed services if the provision of those services exceeds the SPAL. The examples on page 5 and page 6 are two different individual plans that identify the problems. It is important to note that this is one individual with this plan and every person is different.

### **Low Rates Affect Utilization**

Since 2006, individuals on IDD waivers have lost services or have not been able to obtain them because many agencies cannot provide the services at the rates allowed under the SPAL.

In the SLS I/DD waiver, rates for the following services are so low that few, if any, providers will accept clients who require them:

- Basic homemaking
- Supported community connections
- Specialized habilitation (if provided to an individual and not a group)
- Prevocational services
- Respite

In the Comprehensive I/DD waiver, it is nearly impossible to locate providers for the following services:

- Specialized habilitation
- Individual Community connections
- Individualized prevocational services

If an individual is rated at a SIS level 1 or 2, no support can be provided for 24-hour respite support because the rate is simply too low. That means that family caregivers and host home providers can never leave their homes for an overnight stay (vacation, family emergency, etc.).

When a client first qualifies for the waiver or needs to change their plan, the Case Manager sends out a Request for Proposal (RFP) describing the service needs to providers and their agents. In theory, this would allow a client or his guardian would then choose among competing providers. In practice, few providers respond and the client remains without support. It should be noted that CMS recently advised this method of provider selection is inappropriate because it allows the provider to choose the client, when it should be the other way around.

It is little wonder, then that when a Case Manager sends a Request for Proposal (RFP) seeking agencies to provide services, the average waiting time for any response is 180 days. Worse, after the legislature made funding available to end the SLS wait list, thousands remained on waiting lists or awaiting services because no provider could be found at the prevailing service rates. In 2015, HCPF lost \$20 million in allocations from the legislature (“reverted funds”). HCPF told the Joint Budget Committee that these funds remained unspent because clients did not need them. That is completely inaccurate. This reversion was a direct result of low rates and the inability of agencies to find adequate staffing to provide services.

### **The Impact of New Minimum Wage Requirements**

Colorado employers are challenged in today’s competitive employment environment. Colorado’s new minimum wage law will have an impact on the ability to hire and provide services in waiver programs under the current rate structure.

It is important to understand that the minimum wage is just that--minimum. Providers working for this population are expected to have judgement, interpersonal skills, emotional intelligence, and strong executive functioning. This is a professional level of skill that commands an appropriate wage. Comparing Colorado rates with those of other states has no value in this exercise. The cost of living, employment levels, costs of training and other associated expenses vary widely. Although this step is mandated, these comparisons provide an inaccurate view of the challenges associated with delivery of services.

### **Recommendations**

We offer the following guidelines as a more realistic means of setting rates:

- 1) Rates should be set to support individual services. The current rates encourage services to be provided in group settings, with often adverse consequences. It is also a violation of CMS rules. Most people with I/DD do not do well in groups; they often wander away, become agitated or adopt problem behaviors demonstrated by peers.
- 2) It is imperative to provide a living wage and a means of measuring outcomes or assessing quality service. Rates should allow those with the right skills to make this a profession. Most cases of abuse and neglect can be traced to hiring poorly qualified people to do a job that requires a great deal of skill but pays very poorly.
- 3) Allow families to exercise true consumer direction.

Rates and service plan limitations for Colorado’s waiver programs create disparity and in the SLS waiver make people choose between needed services. The combination of the SIS as an assessment tool and used of the SPAL methodology have a detrimental effect upon many people receiving services in the SLS.

**SLS EXAMPLE 1**

**SPAL Limitations**

Jenny is 36 years old. Because of physical challenges she is not able to complete any of her personal care needs. She is very social, has many connections in the community. Jenny also has a job 2 hrs. twice a week requiring 1-1 assist with support for job related tasks.

You note that if she ONLY got personal care and NO other services (not reasonable) that alone goes above her annual cap. If she does not get out in the community her behaviors will likely deteriorate (as would be the case for anyone). If her family does personal care (bad idea if they are not doing it as a job) they would not be able to have all of the respite they need. How well would any of you do with only two nights a month of uninterrupted sleep or only 5 hours a week off?

SIS Level: Tier 6	Amount of Service	Cost	Annual cost
Supported Community Connections	16 hrs. per week for 52 weeks per year	unit rate is \$6.44 / hr. rate is \$25.76	\$21,432.00
Specialized Habilitation	8 hrs. per week for 48 weeks	unit rate is \$6.05 / hr. rate is \$24.20	\$9,293.00
Respite			
Individual hourly rate	5 hrs. per week @ individual rate	unit rate is \$4.95 / hr. rate is \$19.8	\$3,960.00
Daily rate 2 days/month	2 days per month or 1 weekend	\$197.91 per day	\$4,750.00
<b>TOTAL ANNUAL PLAN</b>			<b>\$39,435</b>
<b>SPAL 6</b>			<b>\$36,181</b>
Jenny needs all of the services in her plan but she has to cut \$3,254 from her plan because she is over the SPAL.			-\$3,254
Personal care 6 hrs./day	Needs 42 hrs. per week	unit rate is \$4.95 / hr. rate is \$19.80	\$43,243.20
Homemaker	Needs 10 hrs. per week	unit rate is \$3.73 / hr. rate is \$14.92	\$7,758.40
Jenny needs both of these services but she has to choose between these and having a life outside of her house.			

**SLS EXAMPLE 2**

**SIS Rate**

Sam is 45 years old and has minimal needs. He lives in his own apartment & has a new job working 3 days a week for 6 hrs. a day. Each day in the week has a different responsibility & he needs to learn the new bus route. He needs help in the community with grocery shopping, banking, getting medication filled & keeping appointments. He also likes to do community activities but needs assistance. At home he needs help learning to do cleaning and laundry.

There are very few people in the DD systems that are able to learn a task and be completely independent with a couple hours instruction in 3 or 4 weeks. Most people will need more than two hours a week of homemaker, especially if this involves errands, cooking, and laundry. Can you do everything you need to do in two hours a week? If not, why should someone with a developmental disability be forced to try? This will likely mean he will either not do cooking and eat only fast food, not do enough laundry and wear dirty clothes, nor not have adequate cleaning done, leaving him at risk for eviction.

In other waivers people get between 6-12 hours for homemaker.

<b>SIS Level: Tier 2</b>	amount of service	cost	Annual cost
Supported Community Connections	8 hrs. per week for 52 weeks	unit rate \$2.87 / hr. rate \$11.48	\$4,776.00
Supported employment	Total 195 for the year	unit rate \$13.02 / hr. rate \$52.08	\$2,539.00
Requires more hrs. at start of new job & then monthly check in			
Enhanced Homemaker	2 hrs. for 4 weeks to learn	unit rate \$6.13/hr. rate \$24.52	\$196.00
Homemaker	2 hrs. for 3 weeks to monitor	unit rate \$3.72/hr. rate \$14.88	\$89.00
Personal Care	4 hrs. per week for 52 weeks	unit rate \$4.95/hr. rate \$19.80	\$4,118.00
Mentorship bus route	3 hrs. for 2 weeks to learn	hour rate \$10.00	\$60.00
Mentorship attending ape's	6 hrs. per year	hour rate \$10.00	\$60.00
<b>TOTAL ANNUAL PLAN</b>			<b>\$11,838</b>
SPAL 1			<b>\$13,212</b>
			<b>\$1,374</b>
To pay his Supported Community Connector a living wage of \$12.00 per hour, the rate would need to be \$12.00 + 20% (agency cost for taxes, sic, vacation, overtime & emergency coverage)			
new rate	Total cost	plan increases by	
\$14.40	\$5,990	\$1,214.40	