

**Independent Developmental Disability Fee for
Service Oversight Board:
Initial Status Report September 9, 2019**

*The New Jersey Independent Developmental Disability Fee for Service
Oversight Board* encourages comments and feedback via email at:

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Report September 9, 2019**

**To: Office of the Governor, State of New
Jersey New Jersey State Legislature
Department of Human Services, Division of Developmental Disabilities**

Introduction

As part of its systems reform efforts, the New Jersey Division of Developmental Disabilities (DDD) has transitioned from a contracted cost reimbursement payment system to a Medicaid-reimbursed, fee-for-service (FFS) model, with only a limited number of contracts remaining as of this report. This significant reform was undertaken to accomplish the following goals:

- To allow the State to draw down a federal match for all services
- To increase the number of adults served and the number and types of services available
- To increase opportunities for adults with intellectual and developmental disabilities (IDD) to participate meaningfully in their communities.

Recognizing the tremendous impact shifting to FFS would have on the service delivery system, legislation was passed on May 11, 2017 to establish the Independent Developmental Disability Fee-for-Service Transition Oversight Board (referred to hereafter as “the Board”).

Specifically, the purpose of the Board is threefold:

1. Monitor and oversee the transition by DDD-contracted providers to a fee-for-service reimbursement system;
2. Determine the adequacy of fee-for-service reimbursement rates; and
3. Provide recommendations to better facilitate the transition.

The Board shall evaluate and report on the status and effect of the transition by community-based providers to a fee-for-service reimbursement model. The Board’s evaluation of the transition shall primarily focus on its effects on access to care, continuity of care and quality of care. The Board shall submit a written status report that shall:

1. Evaluate the adequacy of FFS reimbursement rates as of the time of reporting
2. Identify positive and negative effects revealed during the reporting period that have been associated with the transition to FFS reimbursement system
3. Identify the number and percentage of treatment providers that have difficulties with the transition
4. Identify specific problems hampering the transition
5. identify actions taken during the reporting period to counteract or remedy positive/negative effects and/or problems hampering the transition

6. Indicate the number and percentage of consumers who have been served during the reporting period and indicate number reduced as a result of transition AND number and percentage who have been unable to obtain services
7. Provide recommendations for the modification of rates and other actions that could better facilitate the transition, ease burden on providers, avoid or redress any unintended lapses in services/reductions in service quality or capabilities.

In addition, to establishing the Board, the legislation also directed the Division of Purchase and Property in the Department of Treasury, in consultation with the Department of Human Services (DHS) to issue a Request for Proposal (RFP) for a consultant to evaluate the transition to FFS and the rates adopted on the financial sustainability of provider agencies, access to care, continuity of care, and quality of care. There have been delays with the RFP, and at the time of this report, the contract has not yet been awarded. Bids are due in September 2019, and the Board is hopeful that the award decision can be expedited and to allow the important work of the Consultant to be started as soon as possible.

Although the legislation called for the Board's establishment "within 45 days after the effective date of this act", the Board laid dormant for the next year and a half. In fact, it was not until Governor Murphy appointed 10 members to the Board in December 2018 that the Board was effectively established. Given that the Board was not convened until over 20 months after the legislation passed and after the transition to FFS was largely completed, there is a necessary shift in the work of the Board from examining the transition of FFS to the impact that transition has had on the DDD system. The Board believes that despite this modification, the intent of the work outlined by the legislation can still be carried out successfully. The Board has worked with DHS and DDD leadership to clarify the role of the Board and identify common ground to address concerns regarding the scope of the Board's work.

The legislation requires that the Board submit the following written status reports:

- Initial status report submitted six months after the board's organizational meeting;
- Interim status report submitted one year after the board's organizational meeting; and,
- Final report submitted two years after the board's organizational meeting.

This report serves as the initial status report of the Board.

Background

In October 2012, The Centers for Medicaid and Medicare Services (CMS) approved New Jersey's Comprehensive Waiver (1115a), including a new component for people with IDD known as the Supports Program. DHS engaged Johnston Villegas-Grubbs and Associates (JVGA) to conduct a rate study to assist in the development of a new rate structure for services within both the Supports Program and Community Care Program (formerly the Community Care Waiver) in January 2013. DHS and JVGA included self-advocates, families, and providers in the rate setting process through the Rate Setting Advisory and Rate Setting Financial Committees. The final report with the rate schedule was released in July 2014. In 2015, Supports Program Enrollment began, and in 2017 the first individuals began to transition to the FFS model.

The magnitude of the work that was accomplished by DHS and DDD to achieve this monumental system change should not be overlooked. Some of the major tasks that were accomplished in preparing the IDD community for this change include:

- Submission and approval of the Comprehensive Waiver
- Introduction of iRecord (an electronic online system used to create and house individualized service plans and create required service prior authorizations)
- Development of a combined Medicaid/DDD application
- Creation of a new Person Centered Planning Tool and Individualized Service Plan (ISP)
- Designation of the New Jersey Comprehensive Assessment Tool (NJCAT) as the assessment tool
- Formation of Supported Housing Connection to take over housing payments previously administered via contract
- Amendments to the Representative Payee standards
- Institution of Support Coordination as the model for conflict-free case management.

The goal of all of these changes and actions was to establish a service delivery system intended to:

- Create an equitable funding process where individuals with similar needs have similar budgets
- Provide equal compensation to providers for delivering the same service
- Give individuals flexible budgets that promote choice and portability
- Improve access to a wider variety of services.

DHS also thoughtfully engaged with individuals, families, and providers throughout the process. For contracted providers, this support included infrastructure support which allowed each provider up to 1% of their ceiling contract to be used to support the transition. Providers were able to use these dollars to fund things like electronic health records software, computer hardware, consultants, and new staff positions. In addition, DDD also conducted webinars and one-on-one provider and family meetings to enhance readiness. DDD was also deliberate in offering a gradual transition to ensure provider and system readiness. Individuals were converted to the new model of services after completing the planning process in coordination with their families and care planning team members. This planning included vetting each individual to ensure they had active Medicaid, completed ICD 10, met all functional eligibility criteria for DDD services, that their service providers were Medicaid/DDD approved for the services and supports the individual would utilize.

The positive news is that the DDD system is very close to completing the major system shift to FFS. As of June 30, 2019, there have been 19,600 individuals, or 91% of individuals served by DDD, enrolled into FFS programs. The CCP, which includes licensed residential care, accounts for about 10,000 of those enrolled in FFS to date, with the remaining 9,600 enrolled on the Supports Program (SP). There are an estimated 2,000 individuals remaining to enroll.

It would not have been possible to get this far in the transition without the leadership at DHS and DDD, an outstanding network of service providers, and, most importantly, individuals with IDD and their families who challenge us to continuously strive to improve how supports and services are offered and provided in NJ. It is that promise for continued improvement that is driving the work of the Board.

Recognizing that the transition to FFS is nearly complete, our focus must now shift to evaluating the aspects of FFS that are problematic and areas that will further improve access and quality of care.

Methodology

The Board has met monthly since February 2019. In addition, members have met with legislative leadership from both the Senate and Assembly to help clarify legislative direction for the committee. DHS and DDD staff have participated, when requested, by attending several meetings. Paul Aronsohn, Ombudsman for Individuals with Intellectual and Developmental Disabilities and Their Families, has attended several meeting to share insight he has gained through his work. In addition, the Board has used the New Jersey Council Developmental Disabilities(NJCDD) to solicit stakeholder input from families on access to services. Board members have informally sought feedback from their networks on the FFS conversion. This feedback has included Providers, Support Coordinator agencies, and families of the individuals we support.

The Board also reviewed many of the position papers, white papers, and general correspondences that have been produced during the transition. This includes work done by the Alliance for the Betterment of Citizens with Disabilities (ABCD), The Arc of NJ, and New Jersey Association of Community Providers (NJACP).

A significant challenge facing the Board is access to data that will provide a meaningful picture of how providers and individuals have been impacted by the transition to FFS. The delay in the appointment of the consultant is a significant barrier as the consultant is expected to drive much of the data review and analysis. While DDD has provided some data (see Appendix A), it is not enough to inform decisions on many of the anecdotal assumptions that are being made regarding rate adequacy, rate sustainability, and challenges accessing some services. It cannot be emphasized enough that having a consultant available and access to data is critical to the work of the Board.

Preliminary Findings of the Impact of the Transition to Fee-for-Service

An over-arching issue that affects all service areas and must be examined is the Direct Support Professional (DSP) workforce crisis. Difficulties in finding, keeping, and ensuring the competence of the DSPs is the greatest challenge facing the DD service delivery system in NJ and across the country. While we would be facing this challenge regardless of whether we were in a contract reimbursement model or fee-for service model, it cannot be ignored as a significant barrier for access to services.

NJ has included a rate increase in FY19 and FY20 to try to address the DSP workforce crisis. However, despite those increases, Providers report continuing to struggle to recruit and retain

workers because wages are not commensurate with the level of responsibility required by direct care positions. Families also report difficulties finding Self-Directed Employees and express concern over turnover and vacancies in group homes and/or day programs.

In June 2019, DDD encouraged Providers to complete the NCI Staff Stability Survey. Each year, National Core Indicators™ (NCI™)—a collaboration between the National Association of State Directors of Developmental Disabilities Services, the Human Services Research Institute, and participating states— works with member states to collect comprehensive data on the workforce providing direct supports to adults (age 18 and over) with IDD. The goal is to help states benchmark their workforce data to those of other states so they can measure improvements made through policy or programmatic changes. This was first year that NJ participated in the survey but it will hopefully provide critical data to allow DHS/DDD to help proactively plan to address the DSP workforce crisis and address the economic factors that will impact rate sustainability.

In addition to the DSP crisis, in this initial report, the Board has identified four critical areas to highlight and make initial recommendations on. These should be viewed as preliminary findings with recommendations suggested to fix critical issues. As the Board delves further into its work, additional recommendations within these and other areas will be considered.

Support Coordination

Support Coordination, the mode of conflict-free case management selected by the state, is an essential element in FFS. The Support Coordinator plays the most significant role in ensuring that an individual has access to and choice of critical supports and services needed to participate meaningfully in their communities. A qualified, competent network of Support Coordination agencies is critical to the service delivery system in NJ. One of the most critical problems in this area is that in their rate study, JVGA used the Bureau of Labor Statistics (BLS) occupational code “Social and Human Service Assistants”. This job code does not require a Bachelor degree, yet DDD requires support coordinators to have a bachelor degree. As a result, the rate for support coordination is inadequate. This makes recruitment, hiring and retaining qualified support coordinators very difficult. A more appropriate BLS category would be “Social Worker”, which requires a college degree.

There are several negative consequences to using inadequate rates that do not allow for competitive wages and benefits to attract and retain the small pool of qualified staff available in the labor market. These include:

- Increased turnover resulting in a negative effect on the quality of services.
- Increased size of caseloads, which negatively impacts the efficiency and effectiveness of services.
- The inability of agencies to invest in the managerial staff needed to provide oversight and maintain quality.

Preliminary Recommendation:

Adjust the support coordination rates using the BLS code “Social Worker” to accurately reflect the required educational requirements of the position. It would not be prudent to decrease the educational requirements in such a critical role; therefore, it is necessary to adjust the rate utilizing the appropriate BLS occupational code.

Day Habilitation

The Day Habilitation Rate has been consistently identified by Provider’s as the most problematic rate in FFS. In April 2018, the three trade organizations, ABCD, NJACP, and The Arc of NJ collaborated to create the position paper “Recommendations to Sustain Quality Day Services in NJ for People with Intellectual and Developmental Disabilities,” which outlined several recommendations to address day services in NJ. The Board is committed to focusing on how FFS impacts employment and day services in NJ and will devote significant effort in future reports to address recommendations to improve Employment and Day Services. However, The Oversight Board would like DHS/DDD to highlight one item in this initial report, which negatively impacts providers.

Currently, for individuals residing within their catchment area, Day Habilitation Providers are required to provide door-to-door transportation to and from the individual’s home and the day habilitation location. However, DDD has determined that this service is not billable. While DDD has provided some new guidance that allows for day habilitation to be billed when an aide is on the van in addition to the driver, it does not address the issue for the large number of individuals who can safely be transported without an aide. Not allowing the Provider to bill from point of contact with the individual is not a fiscally viable business rule. In many cases, the Provider is delivering as much as 8 hours of service in the day and only allowed to claim for 5 ½ hours or 6 hours per day.

In addition, since catchment areas were determined individually by providers, there is a significant disparity in catchment areas among Providers and that has been identified as a concern by both families and Support Coordination agencies.

Preliminary Recommendation:

Allow Providers to bill for services for the duration the individual is in their care including transportation to and from day habilitation facilities. This would also eliminate issues with Catchment area inequities across providers.

Goods and Services

The inclusion of the Goods and Services category has allowed individuals to access services offered by companies outside of the IDD Provider community (i.e., those available to the general public) or goods that provide increased ability for individuals to access their homes and communities. This has allowed individuals to access a greater range of services than in the past, however individuals with I/DD and their families, support coordinators, and Goods and Services

vendors have reported a number of issues including:

- The denial of services that had been previously been paid for by DDD, sometimes for decades, due to a change in allowable goods and services authorizations. NJCDD conducted a recent survey that it shared with the Board. While a small number of individuals/families reported greater access to Goods and Services (23), nearly three times as many individuals/families reported the elimination of Goods and Services (61). Individuals/families also report being unable to obtain Goods and Services despite the identified need (90). Examples of services that have been eliminated include sign language classes, social programs, and cognitive therapy programs.
- The state's contract vendor/fiscal employer agent, Public Partnerships, has failed to make timely and accurate payments for approved Goods and Services. As a result, in some reported cases, vendors have discontinued providing Goods and Services, which lead to the abrupt end to meaningful services that individuals with IDD and their families selected and included in their ISPs.
- The approval of Goods and Services requests appear to be arbitrary and capricious. These authorizations are made on a case-by-case basis by DDD. DDD often does not issue timely responses to requests and does not consistently offer a right to appeal DDD's administrative decision. Decisions are inconsistent across DDD reviewers, as DDD lacks clear policies related to approvals. On denied requests, DDD has often wrongfully applied guidelines that services must be provided in an 'integrated' setting. This guideline is not in the best interest of all DDD eligible service recipients.

Preliminary Recommendations:

1. DDD needs to hold the vendor/fiscal employer agent accountable to accurate and timely payment of Goods and Services claims.
2. DDD should conduct a review of Goods and Services claims paid to date and develop standardized reasonable and customary rates/approval levels in order to provide more timely and consistent review and approval of Goods and Services requests.
3. DDD should send timely dispositions as to Goods and Services requests with the appeals process with any denial.
4. DDD should reconsider its access to certain Goods and Services requests its current use of services being delivered in 'integrated' settings.

The New Jersey Comprehensive Assessment Tool (NJCAT)

All individuals accessing services in the FFS system are required to undergo an assessment process to determine their budget for "purchasing" services. Caregivers/family members who are most familiar with the individual complete the NJCAT, and the results of the NJCAT are calculated and summarized into a score based on three areas: self-care, behavior and medical. The resulting score establishes the "tier" in which each individual has been assigned based on his/her support needs. Tiers range from A to E, with individuals in tier A requiring the least support. There is also a rarely-used tier F for exceptional cases. In addition to the assigned tier, some individuals may also be assigned what is referred to as an "acuity factor." The

acuity factor is given to individuals who have increased medical and/or behavioral needs, which require support staff with a higher level of expertise and training. It is the tier and acuity (if assigned) that determines an individual's budget and ultimately the services that may be "purchased" from a provider. Failure to adequately capture an individual's needs could result in an inappropriate assignment of tiers and acuity levels that directly impact the services that are made available due to restrictions in the budget. A comprehensive, vetted, and statistically valid assessment tool is critical as it determines an individual's assigned tier and, if appropriate, an acuity factor.

The mapping of the NJ CAT to the Tier assignment should be further analyzed. There has been consistent feedback that the NJCAT and the resulting tier assignments do not accurately capture the support needs for individuals with behavioral/mental health challenges. The result is that there is a significant number of individuals whose budgets are inadequate to support their needs.

Preliminary Recommendations:

- The NJCAT and the methodology for mapping to Tiers and triggering the acuity factor needs to be reviewed. As DDD begins to implement the reassessment process for the majority of individuals in the system, it is important to revisit the assessment tool and ensure that it is a statistically valid.

Scope of work for next reporting cycle

1. Stakeholder Feedback

The Board will engage in a more formal approach to seeking Stakeholder Feedback from individuals and families, Providers, and Support Coordinators on FFS. This may include additional surveys and listening sessions.

2. Collaboration with Consultant

The Board will work with the Consultant selected by DHS to identify data and information needed to assess rate adequacy, rate sustainability, and the impact of rates on access to services.

3. Rate Sustainability

The Board will consider factors impacting rate sustainability and adequacy of provider network.

4. Business Rules

The Board will recommend actions that could better facilitate the transition, ease burden on providers, and increase efficiencies.

5. Access to service

Recognizing that the shift to FFS was more than an adjustment to the funding mechanism, the Board will focus efforts on addressing issues that impact access to care, continuity of care and quality of care.

Appendix A

DATA PROVIDED BY DDD

DDD FFS by date-of-service ('000s)	FY 2017	FY 2018	FY 2019
Assistive technology and services	11	66	178
Behavioral Supports	129	580	1,700
Day/Employment	16,720	105,524	282,402
Goods & Services	-	3,207	8,104
Home/vehicle modifications	-	163	197
Individual Supports/Residential	6	183,422	872,298
Respite	323	2,159	5,145
Therapies (OT, PT, Speech)	4	171	1,272
Transportation (if not part of another service)	547	2,015	4,227
Grand Total	\$ 17,740	\$ 297,307	\$ 1,175,523
Approximate number of Individuals enrolled at end of FY	2,500	13,200	19,600