

State of Vermont
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MEMORANDUM

TO: Medicaid Advisory Board

FROM: Leslie Wisdom, Esq. *Leslie*

DATE: October 1, 2013

SUBJECT: Proposed Rule Amendment – *Methods, Standards and Principles for Establishing Payment Rates for Private Nonmedical Institutions Providing Residential Child Care Services*

The Division of Rate Setting (DRS or Division) is proposing a change to its rate setting rules for Private Nonmedical Institutions Providing Residential Child Care Services (PNMIs), which are residential treatment programs for children. Currently, we have 18 PNMI programs in Vermont.

This proposed rule changes the rate setting methodology for PNMIs from a budget-based system to a prospective rate setting system based on allowable actual costs in a base year. The last time that the Division set rates for PNMIs was in state fiscal year 2008. In state fiscal year 2009, PNMIs received a 3.75 percent increase through the rulemaking process and the intent at that time was to adopt a new rate setting methodology to set rates for state fiscal year 2010. However, beginning in state fiscal year 2010, PNMIs have been level-funded every year until now. In the fiscal year 2014 Big Bill (Sec. E.302 of the Fiscal Year 2014 Appropriations Act (Act No. 50 of the 2013-2014 legislative session, H.530)), language was included that level-funded PNMIs for the first quarter of state fiscal year 2014, but that also directed the Division to propose a rule to set rates based on actual costs effective October 1, 2013.

The substantive change of this proposed rule is the transition from a budget-based rate setting methodology to a system based on allowable costs in a base year. The first base year for PNMI rates effective October 1 will be base year 2012. A new base year will be chosen on July 1, 2014 for state fiscal year 2015 and every July 1 thereafter. The following details the proposed changes by subsection:

- § 1.9 – the major change to this section relates to the fact that rates will now be based on allowable costs in a base year (instead of a budget). Placement Authorizing Departments (PADS) will no longer have the authority to reject total costs/rates of programs in the normal course of setting rates. PADS do, however,



still retain the authority to accept, reject or modify requests for rate adjustments and extraordinary financial relief as well as have the authority to approve or deny requested increases in the cost structure of programs per subsection 4.3.

- § 4.3 –allows PADs to preapprove increases in providers’ costs beyond normal inflationary increases (these are new costs). Providers who spend more without this preapproval (or an approved rate adjustment) risk being capped by the inflation factor cap.
- § 4.13(b) –addresses management fees for individual owners and employees of programs and states that these management fees are not allowable. In order to compensate individual owners or employees who receive management fees instead of salary or wages, this section also provides a mechanism for the Division to impute a reasonable compensation proxy that will be allowed for PNMI reimbursement.
- § 4.21 –provides for a salary cap that limits allowable compensation to seven times the lowest paid direct care PNMI staff person’s hourly wage.
- § 6.3 – specifies that generally, final per diem rates cannot be adjusted retroactively except in certain circumstances listed in the proposed rule.
- § 6.4 – allows the Division to set interim rates.
- § 6.5 – provides that a base year is a provider’s fiscal year.
- § 6.6 –provides that the Division, in consultation with the PADs, will issue occupancy guidelines and provides for some limited discretion in waiving minimum requirements.
- § 6.7 – addresses how the Division will calculate the inflation cap. This is a weighted inflation factor that uses Global Insight’s CMS Home Health Agency price indexes.
- § 7 – specifies how the Division calculates rates and applies the inflation cap to limit per diem rates.
- § 7.6 –looks at net PNMI profit and recaptures net excess revenues over five percent.
- § 8 – provides that there are no limits on the number and timing of rate adjustment requests.
- § 9 – provides that relief is now “extraordinary” rather than just “financial relief” and also provides that extraordinary financial relief is granted at the discretion of DRS and the PADs.
- § 14 transitional provisions - includes a provision to add \$500 to state fiscal year 2014 and state fiscal year 2015 rate year allowable costs for providers to have PNMI sub-schedules prepared by their independent public accountants; provides that these rules apply to rates as of October 1; prescribes base year for October 1, 2013 rates as providers’ 2012 fiscal year; exempts providers from penalty provisions of §3.3(d) for the state fiscal year 2014 rate year; and provides that the inflation factor cap will not apply until the rate years that uses base year 2014 costs.
- There are also a number of other minor changes, updates and clarifications to increase administrative efficiency and update the names of various state agencies, departments and referenced publications.

The following table is a crosswalk between the current rules adopted in 2008 and the proposed rule and explains which subsections are new, repealed or have been moved to a new section:

New	Repealed	Moved	Notes
§4.21 Compensation Limits			
	§ 5.2 Cost Classifications		This section has been repealed as it is not necessary anymore now that we have a standardized cost template that all providers will use to report costs.
§6.3 Retroactive Adjustments to Prospective Rates			
§6.4 Interim Rates			
§6.5 Base Year			
		§6.6 Occupancy	This was §7.3.
§6.7 Inflation Factor			
	§7.1 Total Allowable Costs		This section is repealed because rates are based on actual allowable historic costs rather than budgets.
	§7.3 Occupancy		Moved to §6.6 – see above.
§7.5 Rates for Crisis/Stabilization Programs			This section was in the transitional provisions (§14) for SFY2009 rate setting.
		§7.6 Recapture of Net PNMI Revenue in Excess of Five Percent	This was in the applied revenue (§4.18) section of the rules. Now moved to its own subsection.
		§9 Extraordinary Financial Relief	This has been moved out of §8 (rate adjustments) into its own section. This renumbering caused the remaining section numbers to also change.