

Introduction

Good morning. My name is Allison Ananis, Senior Manager, Agency-Based Fee-for-Service Community Programs, Adult Foster Care and Group Adult Foster Care, at the Office of Long Term Services and Supports (OLTSS) in the Executive Office of Health and Human Services (EOHHS). I am here to present testimony on proposed amendments to 101 CMR 348.00: *Rates for Day Habilitation Services*. The anticipated effective date of the proposed amendments is for dates of service on or after July 1, 2024.

Background

Regulation 101 CMR 348.00: *Rates for Day Habilitation Services* governs the rates for day habilitation (DH) programs, which provide individualized, integrated, and goal-oriented services designed to maximize the independence of individuals with intellectual disabilities and developmental disabilities (ID/DD). These services are provided either in the community in structured day program settings or in nursing facilities as Preadmission Screening and Resident Review (PASRR) specialized services. For DH services provided in the community, rates are based on three levels of complexity: low, moderate, and high need.

Effective October 1, 2022, EOHHS replaced the Department of Developmental Services (DDS) as the purchaser of supplemental one-to-one care services, referred to as individualized staffing support (ISS) services, provided to individuals requiring additional supports at the DH program. For DH services provided in nursing facilities, rates are based on the staff-to-patient ratio such as one to one, or one to two, or one to three. When one staff member serves four or more members in a nursing facility, the community DH rates are used. Effective July 5, 2023, one-time engagement incentives, admission services (code S5105) and re-engagement services (code S5015 with a modifier KZ) were added to support DH programs for returning members to services.

Description of Proposed Amendments

EOHHS is proposing to remove the current acuity and rate structure for the DH program and establish a four-acuity-level rate structure, Levels 1 through 4, to align appropriate services and rates with the needs of an increasingly acute patient population.

Currently, there are three DH acuity levels: low, moderate, and high need, each comprising per diem, half per diem, and quarter per diem rates. Additionally, providers can bill per 15-minute unit of ISS services for members with more intensive one-on-one care needs, paired with the high need acuity level services. Providers currently bill these paired services as an add-on to high need services. The allowable number of ISS units depends on the member's acuity level and is established through the prior authorization (PA) process.

Proposed rates were developed based on the predicted utilization for an average member in each acuity level.

Proposed Rates for Acuity Level 1

Acuity Level 1 is identified as the member needing minimal support throughout the day for approximately 25% of the time while attending the program. Since Level 1 will comprise current low- and moderate-need members, the proposed per diem rate for Level 1 is calculated as the weighted average developed based on the current utilization distribution of the low- and moderate-need services. In state fiscal year (SFY) 2023, of the total units for the low and moderate-need services combined (23.8% and 76.2%, respectively) make up the unit distribution. The weighted average is calculated by multiplying the percent distribution by the corresponding low- and moderate-need rates. The resulting per diem rate for Level 1 is \$125.91. The proposed half per diem rate of \$62.96 and quarter per diem rate of \$31.48 are calculated by dividing the per diem rate by 2 and 4, respectively.

Proposed Rates for Acuity Level 2

Acuity Level 2 is identified as the member needing moderate support throughout the day for approximately 50% of the time at the program. Proposed Level 2 rates are equivalent to the corresponding current high-need-level rates. The proposed per diem, half per diem, and quarter per diem rates for Level 2 are \$167.85, \$83.93, and \$41.96, respectively.

Proposed Rates for Acuity Levels 3 and 4

Acuity Level 3 is identified as the member needing maximum support throughout the day for approximately 75% of the member's time at the program. Acuity Level 4 is identified as the member being totally dependent with support throughout the day for 100% of the time at the program.

For the purpose of rate development, members in Levels 3 and 4, who are eligible for ISS services, are assumed to attend DH programs six hours per day, four days per week, and 50 weeks per year. Due to the intensity of services required, Level 4 members are projected to use twice as many ISS hours as members in Level 3. In SFY 2023, 2,325 DH members received ISS services. Of these members, 77% would qualify as Level 3 and 23% would qualify as Level 4 based on prior authorization reviews. Hence, approximately 1,786 members would be placed in acuity Level 3 and 539 members would be placed in acuity Level 4. Also in SFY 2023, approximately 1.2 million hours of ISS services were provided to eligible DH members. Using the above data, the ISS hours used per year are calculated to be approximately 423 hours per Level 3 member and 846 hours per Level 4 member.

Level 3 per diem rate calculations:

Assuming that the member attends the DH program four days per week and 50 weeks per year, the calculated ISS hours per year per member of 423 is converted to hours per day per member by dividing the annual hours by 50 weeks and then by four days, resulting in 2.1 hours of ISS per day for Level 3 members. Since most members receiving ISS care do not receive this care for the entire time spent at the program, the remainder of the six hours per day at the program is spent receiving the high-need level of care. Therefore, on average, Level 3 members would receive 2.1 hours of ISS care and 3.9 hours of high-need care, for a total of 6 hours per day.

The rate for Level 3 consists of two components: a rate for the high-need service portion and a rate for the ISS service portion, since ISS services are billed paired with high-need services. The hourly rate of \$27.98 for high-need services is calculated by converting the

current high-need per diem rate of \$167.85 to an hourly rate. The hourly rate of \$86.16 for ISS services is calculated by (1) averaging the three current ISS per-15-minute rates based on staff type (direct care staff, registered nurse or RN, and licensed practical nurse or LPN) and multiplying the average by 4 to convert it to an hourly rate; and (2) adding the calculated hourly rate for the high-need services of \$27.98. Finally, to calculate the Level 3 per diem rate, the hourly rates for the high-need and ISS services are multiplied by the respective hours per day provided and combining the two products. That is, (3.9 hours of high-need care* high-need rate of \$27.98) + (2.1 hours of ISS services* ISS rate of \$86.16). This results in a Level 3 per diem rate of \$290.97.

The proposed per diem, half per diem, and quarter per diem rates for Level 3 are \$290.97, \$145.49, and \$72.74, respectively.

It has come to EOHHS's attention that the per diem rate for Level 3 in the proposed regulation published on our web site was erroneously listed as \$209.97 instead of the correct rate of \$290.97 per diem. This technical error will be corrected as a post-hearing change before the final adoption of the proposed regulation.

Level 4 per diem rate calculations:

The proposed per diem rate for Level 4 is calculated in the same manner as the proposed per diem rate for Level 3, except with the assumption that Level 4 members, on average, are projected to use twice as many ISS hours (4.2 hours) and half as many high-need hours (1.8 hours) per member as Level 3 members. The proposed per diem, half per diem, and quarter per diem rates for Level 4 are \$414.09, \$207.05, and \$103.52, respectively.

In addition to the proposed rates for Levels 1 through 4, EOHHS proposes to eliminate the current rate structure for services provided at a nursing facility and establish rates for all levels of nursing facility services at the same rates as those proposed for acuity Level 4 services.

All other rates are proposed to remain at their current levels. A summary of the proposed rates is listed in the Appendix.

Testimony on Amendments to 101 CMR 348.00
Rates for Day Habilitation Services
Effective July 1, 2024
February 23, 2024—11:00 a.m.

The proposed amendments to 101 CMR 348.00 satisfy the requirements of M.G.L. Chapter 118E Section 13C, which requires that rates established by EOHHS for health care services be “adequate to meet the costs incurred by efficiently and economically operated facilities providing care and services in conformity with applicable state and federal laws and regulations and quality and safety standards and which are within the financial capacity of the commonwealth.”

Fiscal Impact

The estimated aggregate annual fiscal impact of the proposed amendments is \$43.5 million, which represents a 13.3% increase over SFY 2023 base spending of \$326.5 million. The fiscal impact is calculated based on a total of 10,885 DH members, which accounts for the additional 2,595 members projected to enroll or re-enroll, for whom providers would bill for one-time payments for admission or reengagement services, respectively.

This concludes my testimony.

Thank you.

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APPENDIX

The table below summarizes the proposed rates as described in the staff testimony.

Proposed Rates Effective July 1, 2024			
Service Level	Quarter Per Diem	Half Per Diem	Per Diem
Level 1	\$31.48	\$62.96	\$125.91
Level 2	\$41.96	\$83.93	\$167.85
Level 3	\$72.74	\$145.49	\$290.97
Level 4	\$103.52	\$207.05	\$414.09
NF (all levels)	\$103.52	\$207.05	\$414.09