



DSP CRISIS IN MAINE

A SYSTEM IN CRISIS



PINELAND CONSENT DECREES

The 1975 Pineland class action litigation was settled in 1978 with the entry of a Court Order known as the Pineland Consent Decree. See, *Wuori v. Zitnay* (Docket No. 75-80-P)(D.Me. July 14, 1978). The Pineland Decree declared that the Department must provide housing and services for any Pineland resident able to live in the community.

COMMUNITY CONSENT DECREE

Over the next few years, the Department failed to adequately comply with the Decree requirements and in 1991 a subsequent court action was brought on behalf of the Class. This resulted in a second decree, called the Community Consent Decree, which set forth a more comprehensive set of rights, standards, and principles governing the delivery of required services to Class Members in the community. *Consumer Advisory Bd. v. Harvey*, 2009 U.S. Dist. LEXIS 125425 (D. Me. Oct. 9, 2009). This Decree required the delivery services through a Person-Centered Planning process and emphasized principles of community inclusion and normalization.

LEGISLATION

In 1990, the Legislature directed the Department to prepare rules that would ensure all Department clients share the rights of Pineland Class Members. Resolves, 1989, ch. 66. In 1991, the Legislature enacted An Act to Facilitate the Delivery of Family Support Services (P.L. 991, ch. 316, §2), directing the Department to provide services to eligible families to maintain and care for minor or adult family members at home, and declaring that “families should receive whatever support is necessary to care for their family members with disabilities at home.” 34-B M.R.S. §1801(2) & 1802(1). The Act also directed the Department to promulgate rules to implement its provisions. 34-B M.R.S. §1807.

RATE DEVELOPMENT

In 2005, the Legislature directed the Department to report on the development of a rate schedule and a methodology for application of the rate schedule "based on assessment of individual need and criteria for resource allocation." Public Law, 2005, Chapter 12, Part CCCC-1. The report must include: The base cost of each service and variations and costs related to geography and service availability, criteria for needs assessment and resource allocation, and the projected annual costs of the waiver, expressed as average cost per person and total cost for the population enrolled May 1, 2005 and anticipated to be involved January 1, 2006 and July 1, 2006. The Department was directed to adopt rules for the rate schedule by January 1, 2006, to be routine technical rules. In 2007, the Legislature amended the Department's rule-making authority by stating that "rules relating to rate setting" are to be promulgated as major substantive rules. P.L. 2007, ch. 237; 34-B M.R.S. § 5432.

MUSKIE SCHOOL AND ROGER DESCHAIES, PHD

In 2003, the Department contracted with the Muskie School of Public Service and a private consultant, Roger Deschaies, Ph.D. to develop the mandated rate setting system. Five years of Medicaid Waiver claims data (2000-2005) were reviewed to develop a draft set of rates and a pilot project was implemented submitting bills and using double-entry bookkeeping to compare payments under the old system to payments with the new rate setting in place.

PILOT AND 3 X 3 TEAMS

Independence Association was part of the original pilot study, and there existed a collaborative 3X3 committee that included three members of DHHS and 3 Providers to discuss the benefits, liabilities, and roll out associated with the new methodology and rate system. The new rates system was implemented on December 30, 2007.

RATES AND METHODOLOGY

The rate set in 2007 based on extensive cost analyses was \$25.37 per hour. Nine years later, the current 2016 hourly rate for Section 21 is \$22.43, an 11.6% reduction from the 2007 rate. Applying the US Department of Labor Consumer Price Index Calculator in order to keep pace with inflation the present rate should be \$29.39 per hour, or 31% more than the 2007 rate. Inflation is not the only factor driving an increase in provider costs since 2007.

OTHER COST DRIVERS

Other cost drivers have increased provider costs during the same period in excess of the cost of inflation. These include health care insurance, workers compensation, wage and hour regulations (DOL OT Rule), minimum wage increases, increased training requirements and other unfunded mandates by the Department and CMS.

DIRECT RATE COMPARISON

Rate Component	2008 Rule	2012 (7%) Rate Cut	2013 (5%) Rate Cut	
Hourly Billable Rate	\$25.37	\$23.61	\$22.43	100%
Hourly Usable Rate	\$24.16	\$22.48	\$21.36	95%
DSP Pay Rate	\$10.37	\$9.65	\$9.17	41%
DSP Benefits/Training	\$4.51	\$4.20	\$3.99	18%
Program Expenses	\$6.38	\$5.94	\$5.64	25%
General and Admin	\$2.90	\$2.70	\$2.56	11%
Provider Usable Rate	\$24.16	\$22.48	\$21.36	95%
Service Provider Tax	\$1.21	\$1.13	\$1.07	5%
Hourly Billable Rate	\$25.37	\$23.61	\$22.43	100%

SURVEY OF IDD PROVIDERS

A survey of 49 providers of IDD services throughout the state of Maine indicate that we employ 11,947 people from Fort Kent to Kittery. Of those agencies the average overall staff vacancy rate was approximately 10%. This was a gross figure and included all types of skill sets. The estimated number of DSP would reflect a much higher figure. The turnover rate ranged between 11% as a low and 70% as a high, and averaged at slightly over 30%.

PROPOSED RULE

- The proposed rule changes to Section 21 to eliminate the 7.5% range which was original to the 2008 rate, will further impact the ability to recruit and retain DSPs.
- We are proposing a wage study be conducted by a professional third party agency. While a study has not been done to obtain an average DSP wage, estimates range between \$10.50 per hour and \$11.00 per hour. The minimum wage in Portland is \$10.10 and is slated to be \$12 per hour in 3 years.

STATE BY STATE COMPARISONS

- Critics will often say Maine has one of the highest cost per person rates in the nation to support individuals with intellectual disabilities and autism. One has to ensure we compare apples with apples. Maine does not have any institutions by which the most challenging individuals are placed.
- Institutions benefit from an ‘economy of scale’ budget and are not inclusive. In Florida a 3-bedroom group home supports 6 individuals.

RATE RESTORATION

- The State of Maine needs to adjust the rates to their original rate adjusted for inflation, or bring it up to \$29.39 per hour with the overwhelming majority of the rate increase going to DSPs using the same factor in the original formula adjusted for inflation. This would make the hourly DSP wage \$13.60 per hour on average and would increase their benefits which have been significantly reduced as the rates were reduced.



