#bFair2DirectCare Coalition

Alliance of Long Island Agencies (ALIA)
Cerebral Palsy Associations of New York State (CP of NYS)
Developmental Disability Alliance of Western New York (DDAWNY)
InterAgency Council of Developmental Disabilities Agencies, Inc. (IAC)
NYS Association of Community Residential Agencies (NYSACRA)
NYSARC, Inc.
New York State Rehabilitation Association (NYSRA)
Self-Advocacy Association of NYS (SANYS)

7/12/17 #bFair2DirectCare Funding Guidance Webinar

~Questions & Answers~

The COLA is not based on new minimum wage but 2016 CFR or 2015/2016 CFR average salaries. As such, for minimum wage employees, the COLA will be less than $0.34.

First, to be clear, there is no COLA in the current State budget. It would have been 0.8% but was deferred again. The budget contains two 3.25% increases effective 1/1/18 and 4/1/18 respectively. We are not yet certain of the methodology that DOH will utilize to calculate the funding levels that each agency will receive. Our plan is to work closely with OPWDD and DOH on the methodology.

How did you arrive at the $15.44/hour living wage calculation?

The $15.44/hour for "rest of State" (other than NYC, LI and Westchester) was calculated using living wage data for NYS gathered and promulgated by the University of MIT in Boston. The Institute does this survey nationally by county and requires a massive undertaking. The most recent study is predicated on 2014 data which we adjusted by an annual CPI up to 2022. The annual CPI utilized is a multi-year average of the one used to determine annual SSI increases.

What shall we do if our Union wants a universal 3.25% increase to DSP?

While that would be the easier thing to do we don't advise you implement across the board increases. The budget language provides flexibility for agencies to use the funds to address your agency-specific DSP and other low-wage earner workforce challenges. In addition, it must be conveyed to the unions and to the workforce in general that this is not part of a "one and done" strategy, but rather is part of a multi-year strategy/campaign to bring all workers to a living wage.

How will the funds come to the agency?

For "cost-based rates" including ICF, IRA, Day Hab and Site-based Prevocational Services, DOH will make adjustments to your agency-specific rates effective 1/1/18 and 4/1/18. We are seeking information from DOH as to how they will calculate the amount (e.g., using the DSP wage amount identified in your 7/1/17 rates to be received shortly, or perhaps based upon the most recent CFR). For regional fees such as Community Habilitation, Community Prevocational Services, Pathway to Employment, etc., DOH will estimate the DSP wages and wage-related benefits portion of the fee, adjust by 3.25% and then adjust the total fee accordingly (so the fee will not increase by a full 3.25% because the fee is not made up of entirely DSP wages and benefits). We expect DOH to make both the rate and fee adjustments shortly after the effective dates (1/1/18 and 4/1/18) of each of the approved increases.

What is the base that the 3.25% is added to?

We are not yet certain of the methodology that DOH will utilize to calculate the funding levels that each agency will receive. Our plan is to work closely with OPWDD and DOH on the methodology.

If we use our own funds for calendar year 2017, what are your thoughts on moving forward before we receive the other information from DOH?

We recommend against proceeding until information is provided by DOH on both minimum wage increases and the 3.25% increases. We are concerned about the potential supplanting of minimum wage funds that are available with the 3.25% increases. In addition, we don't now the methodology yet, nor do we know how much each agency will receive in new funding.

For us to get to $17.72 it will be close to a 40% increase.... we don't expect 8% a year for this.... Feels to me like we need to go slow to make sure we get all the minimum wage related funding the next 2 years?

The expectation is that minimum wage funding will be available each year to help agencies get to $15/hour. This covers about half of the necessary increase. The remaining increase is a little more than 18% which could be covered over our six year initiative.

What is the anticipated retention of long term staff who are now earning the same wage as new staff?

Staff retention continues to be an issue for many reasons. However, because of the enormous cost across the human service agencies, we were not successful in getting either the State or the Legislature interested in funding compression when the new minimum wage plan was passed in the 2016/17 budget. That being said, the guidance from the #bFair2DirectCare Coalition doesn't suggest that you not provide increases to these long-term staff but rather make sure that you raise the salaries of the lowest wage workers first up to the first glide path level to a living wage for all workers.

Page 2 says upstate is $15.54, but all of the other calculations say $15.44. Which rate is correct?

Thanks for catching the typo – $15.44 is the correct number.

Any idea when the DOH survey re: minimum wages will be distributed?

According to DOH the minimum wage survey could be out the week of 7/24/17 or the week after.

If we focus solely on direct care over the next few years we are doing a disservice to the rest of our staff and eventually to our clients. How do we get out of the rut of just asking for Direct Care? What would be the plan to get us a viable, sustainable model?

We understand your point; however, fighting for a living wage for workers that are the backbone of the service system is what we are seeking. This workforce represents about 2/3's of the entire workforce and is over 100,000 employees statewide. We plan to push for the inclusion of program administration staff (the 500 series codes on the CFR) in the next round of increases that we will be advocating for. We believe that, short of fighting for small annual COLA increases (less than 1%), this is the only substantial funding track that both the State and Legislature can support as evidenced in the current budget.

How is the 3.25% calculated and what are the base year wages used?

We are not yet certain of the methodology that DOH will utilize to calculate the funding levels that each agency will receive. Our plan is to work closely with OPWDD and DOH on the methodology.

What will happen if the funding for the first two – 3.25% + 3.25% – (that were approved in the NYS 2017-2018 budget) is not included in future state budgets?

The only scenario where that could happen is if the State's federal Medicaid funding is substantially reduced, otherwise the State is committed to continual funding given their requirement that these funds can only be used to increase wages and salary related benefits.

Understanding that health care is up in the air right now - if government mandates us to provide anything to our staff don't they have an obligation to fund this? For example, minimum wage was increased so they should provide the increase, we are required to provide health insurance - we should see funds that provide for increases.

We believe that the State is committed to continually funding these increases but substantial cuts in the State's Medicaid funding from the federal government will force the State to relook at all Aid to Localities spending. Also, with respect to health insurance, your point is well taken. Even though the rate methodology does provide funding for most of the cost, unfortunately it may not cover all of your cost, especially any incremental cost incurred before the rebasing of your rates.

If the CFR indicates a bottom line surplus, will there be any offsets?

The budget language doesn't assume this nor is there an expectation that an agency surplus/loss calculation will be utilized to determine an agency's funding level.

Can increases given for DSPs before the 1/1/18 date be counted for at a retroactively date?

Yes, the budget language allows wage increases (not bonuses) provided from 4/1/17 to be counted towards the 1/1/18 increase. However, as previously stated we are concerned about the potential supplanting of minimum wage funds that are available with the 3.25% increase.

Will there be fringe included in addition to the 3.25%?

Yes. The language in the budget reads as follows: "the funding received will be used solely to support salary and salary-related fringe benefit increases for direct care staff, direct support professionals and clinical staff".

So we should wait until we have some guidance regarding the minimum wage issue before distributing the 3.25 % two step dollars?

We recommend against proceeding until information is provided by DOH on both minimum wage increases and the 3.25% increases. We are concerned about the potential supplanting of minimum wage funds that are available with the 3.25% increases. In addition, we don't know the methodology yet, nor do we know how much each agency will receive in new funding.

In NYC, 1/1/19 it appears to indicate in order to stay on your glide path in most cases we would need to give a 9% increase. Do you have any hope that the state government will support that? If we follow the glide path, won't we jeopardize our minimum wage funding?

No. Not if you wait to initiate your increases until receiving a minimum wage survey or further instruction from DOH (we believe this will once again be a "point in time" survey asking you to identify as of a particular date how many DSP positions/hours are beneath the new minimum wage and the cost of achieving such). Once you report this on the survey we believe you will have substantiated the basis for additional minimum wage funding but doing it before receipt of the DOH survey could jeopardize accessing the new minimum wage funding.

To AHRC, the percentage is cumulative from the wages we are at now. It would be an increase 3% from the prior year, not 9%. I believe that the Wage Equalization Factor (WEF) used by Rate Rationalization is a real world card in all this. If the WEF changes from 75/25 to even 50/50, this could decimate our rates and could make this entire Living Wage initiative moot...

Although any aspect of the rate setting methodology could be changed, this would require CMS to approve another technical amendment to the HCBS waiver and DOH would have to amend state regulations. When we pursued eliminating the reliance on the regional average component of the WEF on behalf of Provider Associations, we were advised the 75/25 WEF was a compromise agreed to by all as part of the original methodology and would not be changed.

The chart on page 4 suggests that you need an increase of 9% when the minimum wage goes to $15 on 1/1/19. We believe you are referring to the chart on p.5 which indeed shows a 9% increase in order to get from the $15 minimum wage to the $16.35 targeted living wage. But the following year the chart shows another 12% increase to get from, once again, the $15 minimum wage to the 1/1/20 target of $16.80.

The 12% in this example is cumulative. But if you hit the $16.35 target for 1/1/19 then it is only approximately 3% to make the increase to the $16.80 target. However you divvy up the increase between the two years, we would encourage getting to the $16.80 living wage target for 1/1/20.

Is the increase for existing employees only or would it go to the base rate?

First, all of the referenced increases are base wage increases and not bonuses. The budget language requires salary increases which we interpret to mean base increases rather than bonuses. But in addition, each year you would need to also adjust your starting wage – even for vacant entry level positions – up to the targeted living wage. If you do not adjust starting wages too, each time you have a vacancy and fill at the former starting wage (beneath the target) you will lose ground in getting all DSPs up to a living wage.

How confident are you that this living wage will be sufficient by 2022?

I think we are not even confident we will receive further increases beyond the approved 4/1/18 increase let alone the adequacy of the targeted living wage in 2022. But collectively we will advocate for the funds to achieve each of the living wage targets and if there is a need for further action we assume the #bFair2DirectCare Coalition will continue in its advocacy efforts.

Is it true to say that if, as an example, a DSP is already at or above target, it is not necessarily required to give increases?

Correct. You may need or want to address other priorities among your eligible DSP workers.

How do we get the funds?

For "cost-based rates" including ICF, IRA, Day Hab and Site-based Prevocational Services, DOH will make adjustments to your agency-specific rates effective 1/1/18 and 4/1/18. We are seeking information from DOH as to how they will calculate the amount (e.g., using the DSP wage amount identified in your 7/1/17 rates to be received shortly, or perhaps based upon the most recent CFR). For regional fees such as Community Habilitation, Community Prevocational Services, Pathway to Employment, etc., DOH will estimate the DSP wages and wage-related benefits portion of the fee, adjust by 3.25% and then adjust the total fee accordingly (so the fee will not increase by a full 3.25% because the fee is not made up of entirely DSP wages and benefits). We expect DOH to make both the rate and fee adjustments shortly after the effective dates (1/1/18 and 4/1/18) of each of the approved increases.

How will DOH calculate the funding, will they just use the 3.25% on 100-200 support and direct care wages? If we target more higher than the 3.25% to these positions will the brick not reflect in our rates?

DOH will only adjust the amount for reimbursement of DSP wages and salary related fringes. If your agency increases DSP or other wages beyond this additional reimbursement they will not be reimbursed until such time as the CFR in which these costs are reported is used to rebase a future rate.

Clarification: Are the two 3.25% increases to be used fully by 4/1/18?

You will want to be able to demonstrate on audit that all new funding is fully expended within 12-months of the effective date of the rate/fee in which it was received.

Will the Board Resolution be submitted to the State separately or will it be part of our running minutes?

As we recall, similar recent DSP increases required both the passage of the resolution by your board of directors (which would be retained in your board minutes) and the submission of an attestation to OPWDD. We assume the same will be required for these increases.

If we are not advocating for a COLA, then are we in fact giving up on ever being able to give an increase to non-DSP staff who also deserve a raise such as mid-level supervisors. Also, programs such as State Ed are getting a 4% COLA, so why is it that they get a COLA and OPWDD cannot?

The State Ed programs, particularly the 4410 preschool program, have had years of zero growth factors ("COLAs"). This year, although SED requested 4% for preschool, DOB is approving just 2%. According to the BLS index used for the human service agencies COLA, last year it was 0.2% and this year would have been only 0.8%. In previous years where it has been higher, Article VII state budget language has deferred the COLA and we have received zero. The #bFair2DirectCare Coalition strategy identified an approach that had maximum Legislative and ultimately Gubernatorial appeal and was successful in obtaining considerably more than a COLA. Therefore, it is likely that this approach will continue to be pursued so long as we remain under the current Administration.

Will the #bfair2DirectCare funds be added to contracted programs?

We believe that funds will be added for FSS and any other state aid contracts.

We are a minimum wage agency, meaning that a very large portion of the DSPs are paid at that level. In your example you show $11.90 to be paid to staff by 4/1/18 in advance of the 1/1/19 minimum wage increase to $11.10. If we get ahead of minimum wage would we not be giving up those funds that the State would have funded? For us that is over $700,000 a year and greater than our surpluses in those programs.

This is an excellent point. Keep in mind that you will need to fully expend the additional DSP (and clinical) funds received within 12 months of the rate/fee increase. Therefore, you may want to delay making your 4/1/18 targeted living wage increase until after you receive the DOH minimum wage survey that will be used for your 1/1/19 increased minimum wage funding. In this way you will protect against supplanting minimum wage funding with #bFair2DirecCare funding.

Would you recommend waiting until you get and see the increase in the rate sheet, because the Governor still has the ability to make reductions in aid?

Since the first increase is not scheduled until 1/1/18, we believe that whatever federal action, if any, to be taken by Congress will have occurred before this date. Therefore, we should know where we stand before we give out the increases.

Are we in trouble if we delay paying when it is indicating that we start 1/1/18? When we won't know the Rate?

No. Just be sure to plan to fully expend the new funds within 12 months of the effective date of the new rates.

Could we write into the Board Resolution that we are going to pay starting 5/1/18 once rates are clear and pay retro to staff back to 1/1/18?

Yes.

If they only increase the direct and support salaries in the CFR by the 3.25% and we give a 9% increase to give more to these positions, then we will not be funded for the additional 5.75% (9%-3.25%). It is important to know how they are applying the increase.

The new 3.25% reimbursement will be calculated on your total DSP wages and you will have the flexibility to give more than the 3.25% to one segment of your DSPs (i.e., your lowest paid) and less than 3.25% to higher paid. So long as you don't increase your average DSP wages beyond the 3.25% you will not create an unfunded liability.

Do the 3.25% increases apply to Direct Care and Clinical staff including the consultants or only employees?

For clinical it will only be employees. We need to double-check with DOH regarding contracted direct care as we believe this was included in previous initiatives.

For further questions, contact…

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