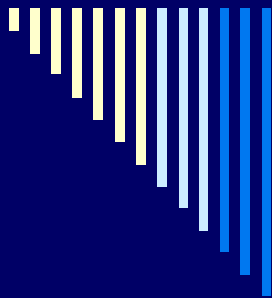


UPDATE ON REIMBURSEMENT ISSUES GOVERNING RELATED PARTIES

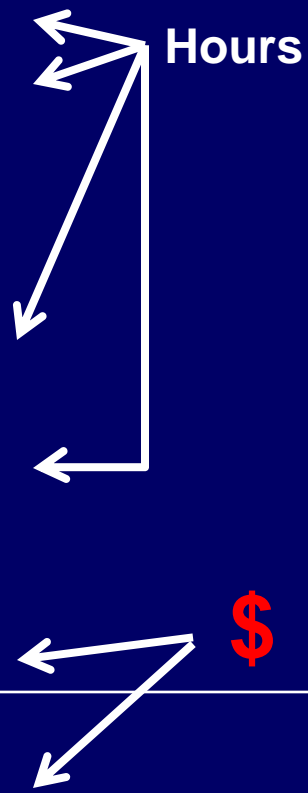
Dennis Henegar
Henegar & Associates L.L.C.
Jerri Lynn Ward, J.D.
Garlo Ward, P.C.

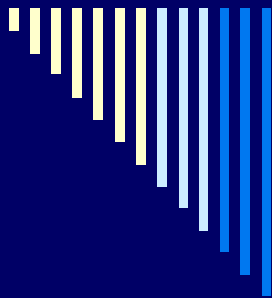


ICF/MR 6-Bed Model

Residential – Direct Care Staff

		Days of Service	Hours Per Day	Rate Calculation	
LON1	x	1094	1095	3.72	4,078.2
LON5	x	1095	1095	4.32	4,732.8
LON8	x	0	0	5.32	-
LON6	x	0	0	7.31	-
LON9	x	0	0	13.73	-
		2189	2190		8,811.0
Leave Factor					1.154
Total Hours Allowed					10,166.6
Average Wage Assumption					7.57
Benefit Factor					1.20
Direct Rate Buildup					\$ 92,352.99
			Per Diem		\$ 42.17

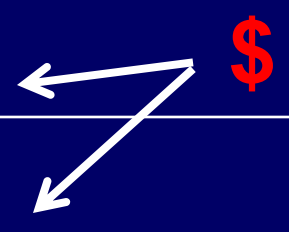
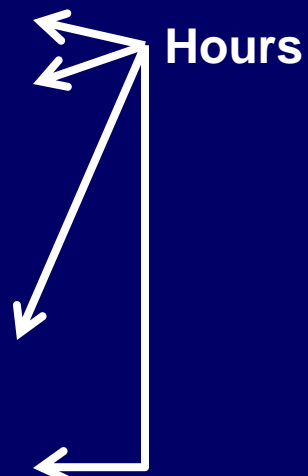


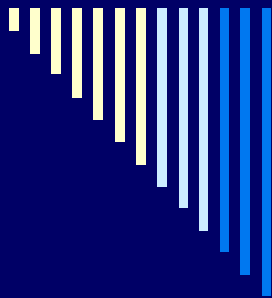


ICF/MR 6-Bed Model

Residential – Direct Care Supervisor

		Days of Service	Caseload	Rate Calculation	
LON1	x	1094	1095	1:6.0	1,040
LON5	x	1095	1095	1:6.0	1,040
LON8	x	0	0	1:6.0	-
LON6	x	0	0	1:6.0	-
LON9	x	0	0	1:6.0	-
		2189	2190		2,080
Leave Factor					1.000
Total Hours Allowed					2,080
Average Wage Assumption					9.65
Benefit Factor					1.20
Direct Rate Buildup					\$ 24,086.40
			Per Diem		\$ 11.00

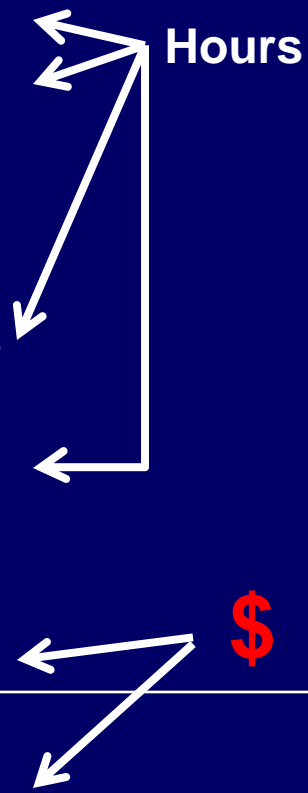


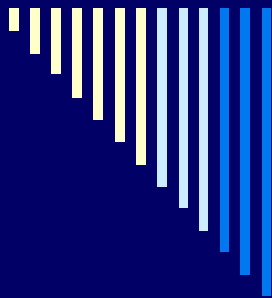


ICF/MR 6-Bed Model

Residential – QMRP

		Days of Service	Caseload	Rate Calculation	
LON1	x	1094	1095	1:18	346.67
LON5	x	1095	1095	1:18	346.67
LON8	x	0	0	1:18	-
LON6	x	0	0	1:12	-
LON9	x	0	0	1:12	-
		2189	2190		963.34
Leave Factor					1.000
Total Hours Allowed					963.34
Average Wage Assumption					14.25
Benefit Factor					1.20
Direct Rate Buildup					\$ 11856.00
			Per Diem		\$ 5.42

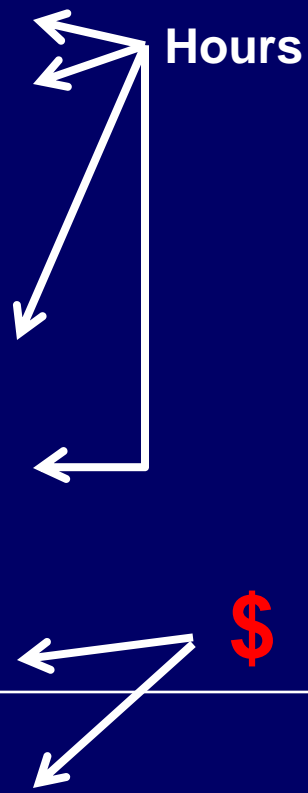




ICF/MR 6-Bed Model

Residential – Nursing

		Days of Service	Caseload	Rate Calculation	
LON1	x	1094	1095	1:24	260.00
LON5	x	1095	1095	1:24	260.00
LON8	x	0	0	1:24	-
LON6	x	0	0	1:24	-
LON9	x	0	0	1:24	-
		2189	2190		520.00
Leave Factor					1.154
Total Hours Allowed					600.00
Average Wage Assumption					16.24
Benefit Factor					1.20
Direct Rate Buildup					\$ 11,692.80
			Per Diem		\$ 5.34



Provider Cost Report

	Model Hours	Reported Hours	Direct Costs
Direct Care	10,160	7,474	\$ 95,877
Direct Care Supervisor	2,080	-	\$ -
QMRP	693	2,072	\$ 36,018
Nursing	600	48	\$ 2,161
Day Hab			\$ 16,261
Totals	13,540	10,854	\$ 143,127

2,686 Hours Less than the Model!!

FAM = 91.6%

Recoupment = \$ 0.00

HHSC Cost Report Audit

	Model Hours	Direct Revenue	Audited Hours	Result Costs
Direct Care	10,167	\$ 92,353	8,734	\$ 95,877
Direct Care Supervisor	2,080	\$ 24,086	-	\$ -
QMRP	693	\$ 11,856	2,080	\$ 30,018
Nursing	600	\$ 11,693	48	\$ 2,161
Day Hab		\$ 16,261		\$ 9,072
Totals	13,540	\$ 156,249	10,858	\$ 149,529

FAM = 96.5%

Recoupment = \$28,908



Major Issues

- Fall back to “reasonable & necessary”.
 - Rules require:
 - Test of Reasonableness: amount expended does not exceed the cost which would be incurred by a prudent business operator seeking to contain costs.
 - Necessary: cost must be one that is usual and customary.
-



Related Party Issues

- Limiting Q's to modeled HOURS and well as modeled wage rate.
 - ICF Model assumes one QMRP for three six-bed houses
 - RAD is allowing 693 hours per house
 - Disallowing excess hours or moving to positions with lower wage rates.
-



Ex Post Facto Rule Making

- ❑ There is no mention in the rules of a limitation on hours worked (until 2080 rule in 2004 rules)
 - ❑ A decision made in 2006 is being applied to all cost reports starting with the 2003 reporting period
 - ❑ Prior to 2003, no adjustments were made for related-party hours
 - ❑ Providers have not been given notice of this change in policy prior to receiving notices of adjustments and recoupment
-



Bureaucratic Folly

- The rule limiting owners and related parties to 2,080 hours per year was allowed to become final despite the fact that:
 - Providers had negative comments when the rule was published
 - It is unrealistic to assume owners can work 40 hours and walk away
 - The limitation is arbitrary and unfairly limits actual expenses
 - Is punitive for small providers who must work in direct care positions
-



Who is a Related Party?

- Related to the Contracted Provider by:
 - Blood or Marriage
 - Common Ownership
 - Control
 - An individual or contract has the power, directly or indirectly, to significantly influence actions or policies of another individual or organization
-



INFORMAL REVIEW

- Informal reexamination of action or determination by HHSC:
 - Regarding allowable and unallowable costs
 - Documentation requirements, methods and procedures
 - Or program-specific allowable costs, taken specifically in regard to interested parties
 - And, adjustments taken as a result of the above.
-



INFORMAL REVIEW

- A prerequisite to a formal appeal, therefore must:
 - Request for extension and/or statement must be timely delivered.
 - Contain a concise statement of specific actions or determinations disputed, recommended resolution and supporting documentation.
 - Signed by appropriate person.
-



APPEAL

- Limited to issues raised in IR.
 - Presented to internal Hearings Officer.
 - Subject to Judicial Review.
-



Major Issues

- Manner of use of “Model”.
 - Lack of notice on hours limitation
 - Prior to 2006 had not applied adjustments to related party hours:
 - Results in providers paying large sums of money
 - No warning to adjust business practices prior to application.
 - Model never went through Rule Making Process.
-



What Hearings Officer Said

- (Add abundant living decision)
-



Major Issues

- Failure to rebase the “Model” in accordance with its rules.

Rebase is defined as:

The revision to the underlying assumptions upon which the modeled rates are calculated, including revisions to staffing ratios, pay structure, the composition of direct care staff, or other cost factors used in the formula for modeling the rates.



Declaratory Issues

The uniform and retroactive reliance on and enforcement of a substantively and materially altered constructions of modeled reimbursement methodology, rebasing and cost assessments applied to Plaintiffs are also Defendants' "rules" subject to the mandatory rulemaking requirements of the APA.



Declaratory Judgment Issues

Denial of due process by failing to notify of the norms and standards which would be applied.



Declaratory Action

The “Model” and Related-Party Disallowances Should Be Invalidated Based on Defendants’ Failure To Strictly Comply with Their Own Rebasing Rules, Resulting in Injury to Plaintiffs.



El Paso Hospital District vs. HHSC (2008)

- HHSC took statute and rule and changed application unilaterally
 - Tried to argue cutoff date was not rule—but permissible interpretation
 - Texas Supreme Court disagreed
-



Texas Supreme Court held...

- Cutoff date was statement of general applicability implementing law or describing procedure
 - Amended another rule by controlling data to be used in future calculations
 - Not statement regarding internal mgt or org—but **AFFECTS PRIVATE RIGHTS!**
-



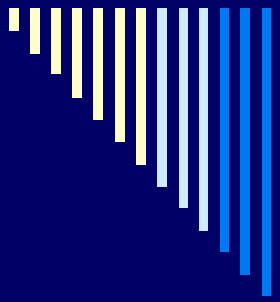
Our Case...

- Hours cap is statement of general applicability implementing law or describing procedure
 - Amends prior rule that only pay rates were determined in “the Model” and no hours caps/ratios would be applied
 - Affects provider’s private rights because is key formula component determining prospective reimbursement rates
-



Questions?





The End

