

Developmental Disabilities Administration Self-Directed Services – Reasonable and Customary Wages/Rates Updates Guidance

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AUDIENCE

- Participant's Self-Directing Services
- Coordinators of Community Services
- Fiscal Management Services Providers
- Support Brokers
- Developmental Disabilities Administration (DDA) Regional Office (RO)

PURPOSE

The Developmental Disabilities Administration's (DDA) self-directed services reasonable and customary wages and rates standards are updated when there is a cost-of-living adjustment, changes to available funding, and the rate setting processes.

The purpose of this guidance is to share information and options for participants when the reasonable and customary standards are updated including:

- 1. Increasing staff wages and vendor rates using the budget modification or Revised PCP processes; and
- 2. Considering future wage or rate changes

This guidance was written in plain language. The requirements are not all listed in this guidance. Detailed requirements can be reviewed in the DDA operated Medicaid Waiver Program applications, applicable laws, regulations, guidance, and policies.

DEFINITIONS

- A. "Allocated Budget" means the total DDA self-directed services funding for participants using the self-directed service delivery model to create their individualized self-directed budget sheet.
- B. "Annual Plan" means the person-centered plan completed within 365 days of the agreed upon Annual PCP date. This date is chosen by the person when they first enter services, and the initial PCP is developed.
- C. "Budget Modification" means the process used to use cost savings or unallocated funding to support employer expenditures.
- D. "Coordinator of Community Services" or "CCS" means an individual who provides Coordination of Community Services either as an employee or contractor of a DDA provider licensed or certified/approved to provide Coordination of Community Service
- E. "<u>DDA COVID-19 SELF-DIRECTION (DDACOVID Form #5)</u>" means the DDA designated modification form used during the public health emergency.
- F. "DDA Medicaid Waiver program" means each Medicaid Home & Community-Based Waiver program submitted by the Maryland Department of Health and approved by the Centers for Medicare & Medicaid Services pursuant to § 1915(c) of the federal Social Security Act, which is overseen and administered by DDA: Community Pathways, Community Supports and Family Supports.
- G. "Designated representative" means an individual who acts on behalf of the participant in managing the participant's services under the self-directed services delivery model in accordance with applicable requirements.
- H. "Detailed Service Authorization" means the LTSS*Maryland DDA Module* PCP section that lists the DDA funded services including the specific service name, units per month, and annual service cost.
- I. "Fiscal Management Services provider" or "FMS provider" means a DDA provider selected by and contracted with the DDA to provide fiscal management services to support each participant enrolled in the Self-Directed Services delivery model.
- J. "Legal guardian" means either:
 - 1. A natural or adoptive parent of an applicant or participant under the age of 18; or
 - 2. A person who has been appointed as guardian of the person or property of an applicant or participant by an order of a court of competent jurisdiction.
- K. "Legally Responsible Person" means an individual who has a legal obligation under the provisions of Maryland law to care for another individual. Under Maryland law, this may include a parent (either natural or adoptive), legal guardian, or individual otherwise legally responsible for the care of a minor (e.g., foster parent or relative appointed by court).

- L. "LTSS*Maryland*" means an electronic information system, developed, and supported by the Maryland Department of Health, used by DDA, the CCS, and DDA Providers to create, review, and maintain records regarding an individual's eligibility status for DDA-funded services, the individual's Person-Centered Plan, and services and funding authorized by the DDA.
- M. "Over Budget" means the total amount of processed and submitted timesheets and invoices exceed the service specific allocated funding in the approved Self-Directed Services Budget Sheet.
- N. "Participant" means an individual enrolled in, and receiving, DDA-funded services.
- O. "Person-centered plan" means a written plan that is developed by a planning process driven by the individual with a developmental disability in order to:
 - 1. Identify the goals and preferences of the individual with a developmental disability;
 - 2. Identify services to support the individual in pursuing the individual's personally defined outcomes in the most integrated community setting;
 - 3. Direct the delivery of services that reflect the individual's personal preferences and choice; and
 - 4. Identify the individual's specific needs that must be addressed to ensure the individual's health and welfare.
- P. "Reasonable and Customary" means the normal pay or charge rate for services.
- Q. "Regional Office" means one of the four local offices of the DDA, serving as the point of contact for applicants, participants, and DDA providers located in certain counties of Maryland. Each Regional Office has the authority to review individual PCPs and authorize funding for services. The Regional Offices are:
 - 1. Central Maryland Regional Office, serving Anne Arundel, Baltimore, Howard, and Harford Counties and Baltimore City;
 - 2. Eastern Shore Regional Office, serving Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester Counties;
 - 3. Southern Maryland Regional Office, serving Calvert, Charles, Montgomery, Prince George's, and St. Mary's Counties; and
 - 4. Western Maryland Regional Office, serving Allegany, Carroll, Frederick, Garrett, and Washington Counties.
- R. "Revised PCP" means a plan developed when an active Initial or Annual PCP requires changes to services, outcomes, or other elements of the plan that reflect a change in the person's needs and wants. Reasons for a revision may include but are not limited to discontinuation, initiation or increase in a service, newly identified outcome, etc.
- S. "Self-Directed Services Budget Spreadsheet" means the fillable Microsoft Excel spreadsheet that captures information related to the Person-Centered Plan's (PCP) approved services and amount, the participant's selected employees and vendors, and the chosen rates of pay within the established reasonable and customary ranges. The

sheet is designed to help people self-directing, and their teams develop and stay within the allocated budget.

- T. "Self-directed services delivery model" means the method for delivery of Waiver program services to the participant that is an alternative to the traditional services delivery model, whereby the participant or the participant's designated representative manages aspects of service delivery.
- U. "Support Broker" means an individual hired by a self-directing participant to provide information and advice to make informed decisions related to day-to- day management of staff providing services within the available budget.
- V. "Team" means a group of individuals, chosen by the individual with a developmental disability or that individual's legal guardian, to participate in development of the person-centered plan with the Coordinator of Community Services.
- W. "Unallocated Funding" means funding authorized for participants using the self-directed service delivery model that are not used within their SDS budget sheet.

Budget Responsibilities and Expenses

- A. Self-direction budget allocations are based on the DDA established rates.
- B. Self-direction reasonable and customary staff wages and vendor/provider rates are based on DDA rates.
- C. The DDA rates may change based on a cost-of-living adjustment, available funding, and <u>rate</u> <u>setting processes</u>.
 - 1. Rate changes can include increases and decreases.
 - 2. Rate changes can impact self-directed services reasonable and customary wages and rate standards. The wage and rate standards may increase or decrease.
 - 3. Participants may need to change the current staff wages due to changes in their budget. Participants will need to follow the Department of Labor requirements. They also need to consider changes in laws. For example, but not limited to:
 - a. <u>The Maryland Guide to Wage Payment and Employment Standards</u> says: "In the absence of an employment contract, agreement or policy which states otherwise, an employer may lower the pay of an employee at any time following one full pay period advance notice. Prior notice of a pay increase is not required." This is found in the section titled <u>Change of Pay: Employer's Discretion</u>
 - b. Pay cuts may not be discriminatory. Pay cuts cannot be made based on a person's gender, race, color, disability, and religion. Reference: <u>Maryland</u> <u>Commission on Civil Rights, Employment Discrimination</u>
 - Maryland minimum wage is set to increase each year through 2025. This may impact the ability to reduce wages. Reference: <u>The People's Law Library of</u> <u>Maryland: Wage Laws;</u>
 - d. Pay reductions to salaried employees may impact how they are classified. Some employees may no longer be considered exempt employees. Reference: <u>U.S.</u> <u>Department of Labor: Fact Sheet # 70 C</u>.

- e. Note the above guidance are some examples. They are not a complete list of requirements. Participants with the support of their team should consider all labor and legal requirements.
- D. The DDA will issue updates to the self-direction reasonable and customary wages and rates. The update will include the effective date of the new standards.
- E. Participants self-directing services have employer authority for specific services.
 - 1. Participants are considered the employer of record.
 - 2. Participants can hire staff to support them.
 - 3. Participants can decide what hourly wage to pay their staff.
 - 4. Participants can decide if they want to offer staff benefits.
 - a. Benefits are optional unless required by law.
 - b. Health insurance premium payments, paid time off, training, and travel reimbursement (e.g., mileage) are examples of benefits.
 - c. Benefits must meet reasonable and customary standards.
 - d. Costs associated with benefits are different from staff wages. They are an additional cost that is included in the self-directed budget sheet.
 - 5. Participants are responsible for paying employer related taxes and benefits from their budget allocation.
 - 6. Participants are responsible for paying for overtime.
 - a. Participants should hire enough direct support staff to meet their needs.
 - b. Participants should minimize the need for staff to work overtime.
 - c. Overtime payment is required by law.
 - d. Overtime payments are an additional cost to the self-directed budget.
 - e. Before approving overtime, participants must ensure they have funding available in their budget allocation.
- F. Participants self-directing their services have budget authority. This means they decide how their budget allocation is spent.
- G. Participants are responsible to pay for various employer and service costs with their allocated budget. Examples include staff wages, taxes, vendor/provider rates, and other items.
- H. Participants must stay within their budget allocation. Participants cannot exceed their budget allocation.
- I. The participant is always the final decision maker. They may seek assistance from their team or decide to make decisions and complete tasks themselves.
- J. Prior to making a decision to increase staff wages or rates, participants should review and consider the various costs they are responsible for paying with their self-directed budget.
- K. Participants with the support of their team must ensure forms and documents are complete and accurate.

Reasonable and Customary - Wages

- A. Participants have employer authority to hire qualified staff for approved services in their Person-Centered Plan.
- B. Services options and staff qualifications are listed in the approved federal programs.
- C. When hiring staff, the participant determines the staff wage.
 - 1. "Staff Wage" means the hourly pay the participant authorizes for their staff for time worked.
 - 2. It does not include other participant employer required expenses such as taxes or optional benefits offered by the participant.
 - 3. Staff wages must be reasonable and customary as issued by the DDA.
- D. Participants can offer their staff a pay (wage) increase.
- E. Participants are not required to offer staff pay (wage) increases.
- F. Pay (wage) increases can be based on staff performance.
- G. Pay (wage) increases can be offered at any time during the year. For example:
 - 1. During the annual PCP process
 - 2. During the staff annual date of hire anniversary
- H. Participants can submit a request to exceed the staff wage range
 - The request is submitted using the <u>Self-Directed Services Staff Wage Exception</u> Form.
 - 2. The form is available on the <u>DDA website</u> and in <u>policy</u>.

Reasonable and Customary - Rates

- A. Participants self-directing their services can hire vendors and providers for approved services in their Person-Centered Plan.
- B. Vendors and providers must meet service qualifications. Qualifications are listed in the <u>approved federal programs</u>.
- C. Participants establish payment rates for vendors and providers.
- D. Vendor and provider rates must be reasonable and customary as issued by the DDA.
- E. Participants are responsible for vendor and provider costs.
- F. These costs come out of the participant's budget.
- G. Participants can negotiate lower rates with vendors and providers.

- H. Vendors
 - 1. Vendors are considered self-employed.
 - 2. Vendors are responsible for their own taxes and business-related expenses.
 - 3. Participants do not pay for vendor taxes and other related business expenses.
 - 4. Vendors are paid a flat fee or rate.
- I. Providers
 - 1. Providers are considered businesses.
 - 2. Participants can hire DDA providers.
 - 3. Providers are responsible for all their employer related responsibilities and costs.
 - 4. Participants do not have to allocate additional funding to pay for provider staff taxes and other related business expenses.
 - 5. Providers are paid a flat fee or rate.
- J. Participants can offer an increased rate they pay vendors and providers.
- K. Participants are not required to increase the vendor and provider rates.
- L. Rate increases can be based on performance.
- M. Rate increases can be offered at any time during the year. For example:
 - 1. During the annual PCP process
 - 2. During the vendor annual date of hire anniversary

Participant Options and Processes

- A. Participants have three options when the DDA updates reasonable and customary rates:
 - 1. Option #1 Budget Modification to use cost savings or unallocated funds to increase wages and rates;
 - 2. Option #2 Revise PCP to increase wages and rates; and
 - 3. Option #3 Consider increasing or decreasing rates and wages during the annual PCP process or at a later
- B. These options and processes are for participants with a current active PCP and approved budgets.
 - 1. Participants with an auto extend or expired PCP, should work with their team to get a PCP submitted.
 - 2. The DDA Regional Offices are available to help and support.

Option #1 – Budget Modification to Use Cost Savings or Unallocated Funds to Increase Wages and Rates

- A. Wage and rate changes can be made using the *budget modification* process.
- B. The budget modification process can be completed at any time during the plan year.
- C. Participants can be supported by their team to complete the process.
- D. The budget modification process uses budget cost savings and/or unallocated funding.
- E. It is important to have an accurate figure for available funding. The participant and their team should review all budget modifications for the year. This includes the use of unallocated funding.
- F. Participants with PCPs recently approved with a July 1, 2022, or later effective date:
 - 1. Some participants may have an approved PCP and budget that were based on the current May 2021 reasonable and customary standards.
 - 2. Participants can use this modification process to update their budget sheet and use the July 2022 reasonable and customary wages and rates.
 - 3. Budget modifications can be submitted prior to July 1, 2022, but cannot be effective until July 1, 2022, or their approved PCP effective date.



Process:

- 1. Based on the participant's decision, calculate funding needed to support an increase to staff wages and/or vendor/provider rates.
 - a. Wage increase calculation:
 - 1) Wage must meet reasonable and customary standards;
 - 2) Calculation must include both the cost associated with the wage increase and associated taxes; and
 - 3) Calculation is from the effective date of wage increase to the end of the plan year.
 - b. Rate increase calculation:
 - 1) Rate must meet reasonable and customary standards; and
 - 2) Calculation is from the effective date of rate increase to the end of the plan year.
 - c. Formula for calculating employee wage increase cost:
 - Increase Wage Cost: # of hours/week * (times) wage raise amount * (times) # of weeks until the end of the plan year
 - 2) Increase Taxes Cost: \$ amount to move * (times) 14% (.14)
 - d. Formula for calculating vendor/provider rate increase cost:
 - 1) Increase Rate Cost: # of hours / week * (times) raise amount * (times) # of weeks until the end of the plan year
 - 2) Increase Taxes Cost: No taxes needed for vendors

- 2. Complete the following forms:
 - a. DDA Budget Modification form to allocate or move funds
 - 1) Participants and their team should use the DDACOVID Form 5.
 - If using unallocated funds, participants with pro-rated or partial budgets should work with their team and DDA Regional Office to confirm the amount of unallocated funding.

Note: The DDA COVID-19 Form #5 will continue to be used after June 30, 2022, until further notice.

b. Fiscal Management Services (FMS) wage change forms

Note: These forms are provided by the FMS.

c. <u>Family as Staff Form</u> (if applicable)

Note: The DDA must approve family members to work over 40 hours after the end of the DDA Appendix K flexibility.

- 3. Complete Budget Modification Checklist
 - a. The checklist is completed by the Participant (or legal guardian / Designated Representative) and their CCS. Other team members may support as needed.
 - b. The checklist will make sure the Budget Modification is complete, correct, and meets program standards.
 - c. The checklist will make sure the Participant and their team understand all the changes being made.
- 4. Coordinator of Community Services (CCS):
 - b. Uploads all forms and documents into the LTSS Maryland Client Attachments
 - c. Emails forms to the participant's FMS
 - d. The Email Subject line should read: (Insert Person's LTSS ID number) Budget Modification – Wage/Rate Increase Request
- 5. Fiscal Management Services (FMS):
- a. Reviews all forms and documents
- b. Attests to the review of the SDSD Budget Modification Checklist meeting program requirements.
- c. The FMS may process the request when:
 - 1) Forms are submitted by the participant's CCS.
 - 2) The DDA Budget Modification Form meets the checklist requirements and program standards.
 - 3) FMS change of staff wage or vendor/provider rates are complete.
 - 4) The wage and/or rates meet the DDA's reasonable and customary standards.
 - 5) Family as Staff form:
 - a) Is completed for allowable DDA waiver services included in the active PCP.

Note: Under the DDA Appendix K COVID-19 public health emergency authority participants are able to hire relatives and legally responsible individuals to deliver additional services until June 30, 2022. Reference: <u>"Appendix K Flexibilities Hiring Relatives</u>"

- b) All relatives that are hired as staff meet the minimum staff requirements to provide the DDA Waiver service they are hired to perform. Reference: DDA Waiver application for qualifications requirements.
- c) The name of the specific service as included in the budget (such as Personal Supports) and permitted by the program should be listed. Please note that "Direct Support Staff" is not a service and should not be listed. Reference: Section 2 of the form - "Job They Will Have" column informs the team of missing or incomplete documents.
- d) Form complies with Service Exceptions and Limitation. Reference Self-Directed Services - Family As Staff Form Guidance - Revised April 26, 2022 – page 5.
- d. The FMS provider may request clarification from the participant and their team when the forms do not meet DDA standards and requirements. Examples include but not limited to:
 - 1) Calculation errors
 - 2) Missing forms
- e. The FMS may deny the request when:
 - 1) The participant PCP is expired or in an auto extend status.
 - 2) The participant's budget is expired or over budget.
 - 3) The service is not authorized on the PCP.
 - 4) The participant does not have available funding to support the increase.
 - 5) The wage or rate does not meet the reasonable and customary standards or policy.
 - 6) The total cost noted under the Service(s) Being Reduced or Taken From Unallocated Funds section does not equal the total cost noted under Services Being Increased or Added* section.
 - 7) The forms do not meet the DDA program standards and requirements.
- The FMS provider will send their determination via email, to the following: f.
 - 1) The Participants, and, if applicable their Legal Guardian or designated representative;
 - 2) The participant's Coordinator of Community Services; and
 - 3) The participant's DDA Regional Office using the email addresses noted below.

Region	Email Address
CMRO	Olasubomi.otuyelu@maryland.gov
ESRO	Jonna.hitch@maryland.gov
SMRO	Tia.henry@maryland.gov
WMRO	Cara.buckman@maryland.gov

- g. The Email Subject line should read: (*Insert Person's LTSS ID number*) Budget Modification Wage/Rate Increase Request Determination.
- h. If the FMS provider's determination is to deny the request, the DDA Regional Office will review the determination. If the DDA determines that the denial was proper, the DDA will issue notice of its decision. The notice will be based on its legal and factual basis, and applicable appeal rights as required by Section 10-207 of the State Government Article of the Maryland Annotated Code.

Example – Budget Modification

J. Doe has a plan that began on September 1, 2021 and ends on August 31, 2022. J. has two (2) employees. One staff works 30 hours each week and provides Community Development Services (CDS). Another staff works 25 hours each week and provides Personal Support (PS) services. J. also has a nurse that they contract for two (2) hours per week for Nursing Support Services (NSS).

J. meets with their team and reviews the new reasonable and customary standards. J. sees that on July 1, the services of CDS, PS, and NSS will all have higher rates. J. decides to give their employees a \$1.25 raise. J. negotiated a new rate with their nurse to be \$5.00 more per hour.

J. reviews their FMS budget statement with their team and decides they won't have enough funds to use *cost savings* from their current budget. J. knows they have *unallocated* funds that should cover these changes. J. meets with their CCS, Support Broker, and close family member to work on the math. J. intentionally does not invite their employees or nurse to come to this meeting because they will be discussing the new rates and wages.

Cost Calculation Example

CDS: 30 hours x \$1.25 * 9 weeks (round up) = \$337.50 CDS Taxes: \$337.50 * .14 = \$47.25 PS: 25 hours * \$1.25 * 9 weeks (round up) = \$281.25 PS Taxes: \$281.25 * .14 = \$39.38 Nursing: 2 hours * \$5.00 * 9 weeks = \$90.00

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Option #2 – Revised PCP to Increase Wage and/or Rates

- A. If participants do not have enough cost savings and unallocated funds to support wage and/or rate changes, a Revised PCP can be submitted.
- B. A Revised PCP can be submitted on or after July 1, 2022.
 - 1. The Revised PCP will use the update rates.
 - 2. The updated rates will increase the participant's budget allocation.

Process:

- 1. The CCS submits a Revised PCP.
 - a. If there are no other changes to the PCP, the CCS should note the revision reason as "*Budget allocation recalculation*."
- 2. Participant, with support of their team if requested, completes:
 - a. The Self-Directed Budget Sheet
 - 1) Revised PCP should be noted on the budget sheet.
 - Approved DDA Budget Allocation from the DSA (red arrow) should note the recalculated Total Plan Year Cost noted in the PCP service authorization section.
 - 3) Increased rates and wages should be noted for applicable services.
 - 4) It is important to make sure the number of hours for all services matches the assessed need from the PCP.

Reference: Instructions for DDA's SDS Budget Sheet

- b. Fiscal Management Services (FMS) wage change forms.
- c. Family as Staff forms (if applicable).
- 3. Complete <u>Revised Budget Sheet Checklist</u>
 - a. The checklist is completed by the Participant (or legal guardian / Designated Representative) and their CCS. Other team members may support as needed.
 - b. The checklist will make sure the Budget Modification is complete, correct, and meets program standards.
 - c. The checklist will make sure the Participant and their team understand all the changes being made.
- 4. CCS shall:
 - a. Complete the PCP Checklist
 - b. Uploads all forms and documents into the LTSS*Maryland* PCP Documentation Section
 - c. Submits the PCP
- 5. The DDA Regional Office:
 - a. Confirms revised PCP is specific to a budget allocation recalculation;
 - b. Approves as per guidance; and
 - c. Completes fiscal processes.

- 6. CCS sends forms to the FMS once the PCP is approved.
- 7. FMS:
 - a. Reviews all forms and documents to ensure they meet the DDA standards.
 - b. Informs team of missing or incomplete documents.
 - c. Attests to the review of the SDSD Budget Modification Checklist meeting program requirements.
 - d. Processes forms that are complete and meet standards.

Example - Revised Plan

J. Doe has a plan that began on September 1, 2021 and ends on August 31, 2022. J. has two (2) employees. One staff works 30 hours each week and provides Community Development Services (CDS). Another staff works 25 hours each week and provides Personal Support (PS) services. J. also has a nurse that they contract for two (2) hours per week for Nursing Support Services (NSS).

J. meets with their team and reviews the new reasonable and customary standards. J. sees that on July 1, the services of CDS, PS, and NSS will all have higher rates. J. decides to give their employees a \$1.25 raise. J. negotiated a new rate with their nurse to be \$5.00 more per hour.

However, this time, J. knows they do not have cost savings or unallocated funds available to cover the raises. J. schedules a meeting with their CCS on July 1 to complete a Revised PCP. J., with the support of their team, will also need to complete the SDS Budget Sheet, FMS forms, and Family as Staff form.

Option #3 - Increasing or Decreasing Rates and Wages During the Annual PCP Process or At a Later Time

- A. Participants are not required to make any wage or rate increases.
- B. Participants can choose to make an increase to wages or rates at a later time.
 - 1. For example, during their annual plan process, staff/vendor evaluation schedule, or at another time in the year.
 - 2. Best practice is to review employees and vendors performance regularly and fairly.
 - 3. Participants can establish a staff and vendor evaluation schedule.
 - 4. During the evaluation process a wage or rate increase can be considered.
- C. Participants may need to make a change when minimum wage increases.
- D. Participants may need to make a change when reasonable and customary wages or rates decrease.
 - 1. The current wage and rate can be used until the next Annual PCP.
 - 2. During the Annual PCP process, wages and rates must comply with the current reasonable and customary standards.
 - 3. Participants will need to follow the Department of Labor requirements when changing pay rates. Please see additional information noted above under Budget Responsibilities and Expenses C. 3.

Resources

Please contact the applicable DDA Regional Office Self-Directed Service lead staff associated with your region with any question.

Central Maryland Regional Office (CMRO)

- Ola Otuyelu at <u>olasubomi.otuyelu@maryland.gov</u> and
- Rashawn Moore at <u>rashawn.moore@maryland.gov</u>

Eastern Shore Regional Office (ESRO)

• Jonna Krabill at jonna.krabill@maryland.gov

Southern Maryland Regional Office (SMRO)

• Tia Henry at <u>tia.henry2@maryland.gov</u>

Western Maryland Regional Office (WMRO)

• Cara Buckman at <u>cara.buckman@maryland.gov</u>