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8.500.18 INCREASE OF THE REIMBURSEMENT RATE RESERVED FOR COMPENSATION OF DIRECT SUPPORT PROFESSIONALS

8.500.18.A DEFINITIONS

8.500.18.A.1 Definitions below only apply to sections 8.500.18 – 21.

8.500.18.A.2 "Compensation" means any form of monetary payment, including bonuses, employer-paid health and other insurance programs, paid time off, payroll taxes, and all other fixed and variable benefits conferred on or received by all direct support professional providing services as enumerated below.

8.500.18.A.3 "Direct Support Professional" means a worker who assists or supervises a worker to assist a person with intellectual and developmental disabilities to lead a fulfilling life in the community through a diverse range of services, including helping the person get ready in the morning, take medication, go to work or find work, and participate in social activities. "direct support professional" includes all workers categorized as program direct support professionals and excludes workers categorized as administrative, as defined in standards established by the financial accounting standards board.

8.500.18.A.4 "Direct Benefit" means compensation that is directly conferred onto a direct support professional for their sole benefit. The compensation cannot be used as a direct benefit to the employing service agency, which may have an indirect benefit to the direct support professional.

8.500.18.A.5 "Plan of Correction" means a formal, written response from a service provider to the Department on any identified areas of non-compliance with any requirements of section 25.5-6-406, CRS or 10 CCR 2505-10, section 8.500.18.

8.500.19 REIMBURSEMENT RATE INCREASE

8.500.19.A On March 1, 2019, The Department increased reimbursement rates six and a half percent to be reserved for compensation to direct support professionals above the rate of compensation that the direct support professionals are receiving as of June 30, 2018. The six and a half percent must be used as a direct benefit for the direct support professional within 60 days from the close of the Department fiscal year. The following services delivered through Home and Community Based Waivers for Persons with Developmental Disabilities, Supported Living Services, and Children's Extensive Supports will receive the six and half percent increase to reimbursement rates:

1. Group Residential Services and Supports;
2. Individual Residential Services and Supports;
3. Specialized Habilitation;
4. Respite;
5. Homemaker Basic;
6. Homemaker Enhanced;
7. Personal Care;
8. Prevocational Services;
9. Behavioral Line Staff;
10. Community Connector;

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11. Supported Community Connections;
12. Mentorship;
13. Supported Employment- Job Development; And
14. Supported Employment- Job Coaching.

8.500.19.A.2 The Department has determined that these uses of the increased funding as described below are not direct benefits for direct support professionals. This list is not exhaustive but provides guidance to Medicaid providers.

1. Executive Salaries
2. Administrative Expenses
3. Human Resource Expenses
4. Information Technology
5. Oversight Expenses
6. Business Management Expenses
7. General Record Keeping Expenses
8. Budget and Finance Expenses
9. Workers' Compensation Insurance
10. Contract Staffing Agency Expenses
11. Employee Appreciation Events
12. Gifts

8.500.20 REPORTING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONAL RATE INCREASE

8.500.20.A On or before December 31, 2019, and three years thereafter, employing service agencies must report and attest to the Department detailing the use of one hundred percent of the six and a half percent, as prescribed in section 25.5-6-406, CRS to increase compensation for all direct support professional, how the employing service agency maintained the increase, and how the employing agency stabilized the direct support professional workforce for the service enumerated above.

1. The service agencies must report to the Department, in the manner prescribed by the Department, by December 31 of each year.
2. The Department has ongoing discretion to request information from service agencies demonstrating how they maintained increases in compensation for Direct Support Professionals beyond the reporting period.
3. Failure to report by December 31 of each year will result in the recovery of the six and a half percent for the year which the service agency failed to report. The Department will recoup the funds through the process as prescribed in section 25.5-4-301, CRS and 10 CCR 2505-10, section 8.076.3.

8.500.21 AUDITING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONAL RATE INCREASE FOR COMPENSATION

8.500.21.A Each employing provider shall keep true and accurate work records, containing such information as the Department may prescribe. Such records shall be retained for a period of not

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less than three years and shall be open to inspection and be subject to being copied by the Department or its authorized representatives at any reasonable time and as often as may be necessary. The Department or any authorized representative may require from any employing provider any sworn or unsworn reports, with respect to persons employed by it, which it deems necessary for the effective administration of section 25.5-6-406, CRS.

8.500.21.B Information thus obtained, or obtained from any individual pursuant to the administration of section 25.5-6-406, CRS shall be held confidential and shall not be published or be open to public inspection, other than to public employees or authorized representatives in the performance of their public duties.

8.500.21.C Employing service agencies shall submit to the Department, at their request, any and all records showing that the six and half percent was used as a direct benefit for direct support professionals, as defined in section 25.5-6-406, CRS including but not limited to:

1. Federal Employment Forms
 - a. W2's -Wage and Tax Statement
 - b. W3 -Transmittal of Wage and Tax Statement
 - c. 941's -Employer's Quarterly Federal Tax Return
 - d. 940 -Employer's Annual Federal Tax Return
2. State Employment Forms
 - a. UTR 1's – State Unemployment Insurance Tax Report
 - b. UTR 1A's - State Unemployment Insurance Tax Report Wage List
3. Tax Returns
4. Independent Contractor Forms
 - a. 1099's- Miscellaneous Income
 - b. 1096 - Annual Summary and Transmittal of U.S. Information Returns
5. Payroll Records
 - a. Payroll Detail
 - b. Payroll Summary
6. Accounting Records
 - a. Chart of Accounts
 - b. General Ledger
 - c. Profit & Loss Statements
 - d. Check Register
7. Bank Statements
8. Personnel Files
9. Timesheets
10. Benefits Records
 - a. Health Insurance Records
 - b. Other Insurance Records
 - c. Paid Time Off Records

8.500.21.D If the Department determines that the service agency did not use the funding resulting from the increase in the reimbursement rate as a direct benefit to the Direct Support Professional, within one year after the close of each reporting period, the state department shall notify the service agency in writing of the state department's intention to recoup funds. The service agency has forty-five days after receiving notice of the determination to:

1. challenge the determination of the state department;
2. provide additional information to the state department demonstrating compliance;
3. submit a plan of correction to the state department

8.500.21.E When the Department determines that a service provider is not in compliance, the service provider, upon written notification by the Department, shall develop a plan of correction. A plan of correction shall include, but not be limited to:

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1. A detailed description of actions to be taken to resolve issues and supporting documentation demonstrating completion.
2. A detailed timeframe specifying the actions to be taken.
3. Employee(s) responsible for implementing the actions.
4. The implementation timeframes and date(s) for completion.

The service provider must submit the plan of correction to the Department within forty-five (45) business days of the receipt of a written request from the Department. The service provider must notify the Department in writing, within five (5) business days of the receipt of the written request from the Department, if it will not be able to submit the plan of correction by the due date. The service provider must explain the rationale for the delay and the Department may grant an extension, in writing, of the deadline for the service provider's compliance.

Upon receipt of the plan of correction, the Department will accept, request modifications, or reject the proposed plan of correction. Modifications or rejections will be accompanied by a written explanation. If a plan of correction is rejected, the service provider must resubmit a new plan of correction along with any requested documentation to the Department for review within five (5) business days of notification.

If the plan of correction is not accepted by the Department, is not completed within the established timeframes, or is not completed to the quality specified by the Department, the Department may initiate recoveries from the service provider.

8.500.21.F The State Department shall notify the service agency in writing of its final determination after affording the service agency the opportunity to take the actions specified in subsection 8.500.20.D and 8.500.20.E. The state department shall recoup from a service agency one hundred percent of the funding resulting from the increase in the reimbursement rate that the service agency received but did not use for a direct benefit for direct support professionals if:

1. the service agency fails to respond to a notice of determination of the state department within the time provided in subsection 8.500.20.D;
2. the service agency is unable to provide documentation of compliance; or
3. the state department does not accept the plan of correction submitted by the service agency pursuant to subsection 8.500.20. D.3.

8.500.20 F All recoveries will be conducted pursuant to section 25.5-4-301, CRS and 10 CCR 2505-10, section 8.076.3.

8.500.21.G Employing service agencies shall maintain all books, documents, papers, accounting records, and other evidence required to support the reporting of payroll information for increased compensation to direct support professionals for at least three years from the reporting deadlines. Employing service agencies shall make the information and materials available for inspection by the state department or its designees at all reasonable times.