



## INFORMATIONAL MEMO

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**TITLE: HOUSE BILL 18-1407 - STABILIZATION OF DIRECT SUPPORT PROFESSIONAL WORKFORCE IMPLEMENTATION FAQ**

**SUPERSEDES NUMBER: N/A**

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**DIVISION AND OFFICE: OFFICE OF COMMUNITY LIVING, BENEFITS AND SERVICES MANAGEMENT DIVISION**

**PROGRAM AREA: HCBS WAIVERS**

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### **Purpose and Audience:**

The purpose of this Informational Memo is to provide all stakeholders responses to frequently asked questions (FAQs) for implementing the wage pass-through portion of House Bill (HB) 18-1407.

### **Information:**

HB 18-1407 requires the Department of Health Care Policy & Financing (Department) to implement a 6.5 percent increase in the reimbursement rate for certain home and community-based services (HCBS) provided to individuals receiving services through the Developmental Disabilities, Supported Living Services, and Children's Extensive Supports waivers.

The increase applies to:

- Group Residential Services and Supports
- Individual Residential Services and Supports
- Specialized Habilitation
- Respite
- Homemaker Basic
- Homemaker Enhanced
- Personal Care
- Prevocational Services

- Behavioral Line Staff
- Community Connector
- Supported Community Connections
- Mentorship
- Supported Employment – Job Development
- Supported Employment – Job Coaching

This increased funding must be used to increase the compensation of Direct Support Professionals. The employing or contracted service agency must report to the Department how the funding was used each year for three years.

### Frequently Asked Questions:

1. **Question:** What is a Direct Support Professional?
  - a. **Answer:** Direct Support Professional means a worker who assists or supervises a worker to assist a person with an 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.
2. **Question:** My Organization does not identify employees as a Direct Support Professionals. How do I show that they qualify under the definition?
  - a. **Answer:** If audited, the employing or contracted service agency must demonstrate, through documentation, that the job description of the employee identifies direct care for Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) as identified in the waivers above, and that the employee performed these functions on a regular basis.
3. **Question:** Does my organization have to provide Direct Support Professionals a 6.5 percent increase in wages?
  - a. **Answer:** No. The 6.5 percent applies to the increase in the reimbursement rate for the services listed in the background section of this memo. The increased funding can be used to increase overall compensation rather than only wages.
4. **Question:** Do the regulations require that each Direct Support Professional receive the same increase in compensation?

- a. **Answer:** The proposed regulations allow for flexibility of the employing or contracted service agency to determine how the increased funding should be used, so long as all Direct Support Professionals receive an increase in compensation. For example, Direct Support Professional 1 may only receive a 1.5 percent increase, while Direct Support Professional 2 receives a 5 percent increase. The increase in compensation does not need to be equal among each Direct Support Professional.
  - b. Please see the proposed regulations at: <https://www.colorado.gov/pacific/sites/default/files/Medical%20Services%20Board%20Public%20Rule%20Review%20Meeting%20Agenda%20-%20Feb%202019.pdf>. Regulations will be heard for final adoption at the Medical Services Board on March 8, 2019.
5. **Question:** How is compensation defined?
  - a. **Answer:** Compensation means any form of monetary payment, including bonuses, employer-paid health and other insurance programs, paid time off, payroll taxes that are proportionate to the increase in compensation, and all other fixed and variable benefits conferred on or received by all Direct Support Professionals.
6. **Question:** Can the increased funding apply to the required increase in Minimum Wage effective January 2019, or any voluntary increase in compensation before March 1, 2019?
  - a. **Answer:** Yes. The increased funding can be applied to any increase to the base rate of compensation of a Direct Support Professional as established on June 30, 2018. The increased funding cannot apply to increases in compensation before July 1, 2018.
7. **Question:** How do I establish a base rate of compensation for a new employee hired after June 30, 2018?
  - a. **Answer:** If a Direct Support Professional was hired after June 30, 2018, the employing agency shall use the lowest compensation paid to a Direct Support Professional of similar functions and job duties as of June 30, 2018.
8. **Question:** What is the purpose of the Reporting Tool?
  - a. **Answer:** The reporting tool demonstrates how the employing or contracted service agency disbursed and maintained the 6.5 percent compensation increase to Direct Support Professionals in the aggregate for the identified reporting period.

- b. Please see the draft reporting tool at:  
<https://www.colorado.gov/pacific/sites/default/files/HB%2018%201407%20Passthrough%20Reporting%20Tool%20-%20DRAFT.pdf>
9. **Question:** When are reports due?
- a. **Answer:** Reports are due by December 31 of each reporting period.
- i. Period 1 report is due by December 31, 2019 and will cover the period from March 1, 2019 through June 30, 2019.
  - ii. Period 2 is due by December 31, 2020 and covers fiscal year (FY) 2019-20 (July 1, 2019 through June 30, 2020).
  - iii. Period 3 is due by December 31, 2021 and covers FY 2020-21 (July 1, 2020 through June 30, 2021).
10. **Question:** Are employing or contracted service agencies penalized or rewarded for having a high or low employee turnover rate?
- a. **Answer:** No. The employee turnover percentage that will be reported provides the Department with information to measure the effectiveness of the program.
11. **Question:** Should there be disbursement amounts in every "Compensation" subcategory?
- a. **Answer:** No. The employing or contracted service agency has flexibility regarding the disbursement of the increased funding.
12. **Question:** What is the attestation section at the bottom of the Reporting Tool?
- a. **Answer:** The "Fiscal Agent" attestation ensures the person who completes the form is authorized to sign on behalf of the entity. The Organized Health Care Delivery System (OHCDS) attestation certifies that the entity reporting is an OHCDS, and the increased funding has been passed through to the contracted agencies.
13. **Question:** If the employing or contracted service agency fails to bill for services at the full rate or use the increased funding, are they subject to reporting and auditing?
- a. **Answer:** Yes. Employing or contracted service agencies are still required to report and check the box that the agency has chosen not to bill at the increased rate and not pass-through the resulting funding increase to Direct Support Professionals. The employing or contracted service agency will still be subject to an audit by the Department.

14. **Question:** Would an employing or contracted service agency with multiple locations report on all locations in the aggregate or per individual location?

- a. **Answer:** The employing or contracted service agencies can check a box on the Reporting Tool for "All Locations" or "Individual Locations."

**Attachments:**

None

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