

Title of Rule: Revision to the Medical Assistance Rule concerning Reimbursement Rate Increase for Direct Support Professional Workforce Stabilization, Section 5.505
Rule Number: MSB 19-01-02-A
Division / Contact / Phone: Benefits and Services Management Division/ Office of Community Living / Bryan Fife / 303-866-6433

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

This rule implements House Bill 18-1407, which requires the Department to increase specific services in specific waivers by 6.5%. The increased funding must be reserved and used to increase compensation of direct support professionals. The rule establishes the requirement for the use of the funds, the reporting requirements, and the Department's ability to audit provider reported information.

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
 for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

N/A

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018);
Section 25.5-6-406

Initial Review
Proposed Effective Date

03/08/19
05/31/19

Final Adoption
Emergency Adoption

04/12/19

DOCUMENT #07

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Providers and direct support professionals will be affected by this rule. The providers must bill for the increase funding and expend cost to implement increased compensation to direct support professionals and wages. Medicaid members will receive better access to services due to a stabilization in the workforces.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Increase compensation to direct support professionals will lead to a stabilization of the workforce allowing better access to services for Medicaid members.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department will bear the cost of the increased reimbursement rate with federal matching.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

N/A

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

N/A

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

This rule implements a house bill passed through legislation.

1 **8.505 INCREASE OF THE REIMBURSEMENT RATE RESERVED FOR COMPENSATION OF**
2 **DIRECT SUPPORT PROFESSIONALS**

3 **8.505.1 DEFINITIONS**

4 Definitions below only apply to Section 8.505.

5 A. Compensation means any form of monetary payment, including bonuses, employer-paid health
6 and other insurance programs, paid time off, payroll taxes that are proportionate to the increase
7 in compensation, and all other fixed and variable benefits conferred on or received by all direct
8 support professionals providing services as enumerated below.

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

16 C. Direct Benefit means compensation that is directly conferred onto a direct support professional for
17 their sole benefit and does not include direct benefits to the employing or contracting service
18 agency which may have an indirect benefit to the direct support professional.

19 D. Plan of Correction means a formal, written response from a employing or contracting service
20 agency to the Department on identified areas of non-compliance with requirements listed at
21 Section 25.5-6-406, C.R.S. or 10 CCR 2505-10, Section 8.505.

22 E. Payroll tax means taxes that are paid or withheld by the employer on the employee's behalf such
23 as Social Security tax, Medicare tax, and Medicare surtax.

24 **8.505.2 REIMBURSEMENT RATE INCREASE**

25 A. Effective March 1, 2019, the Department increased reimbursement rates by six and a half percent
26 which is to be reserved for compensation to direct support professionals above the rate of
27 compensation that the direct support professionals received as of June 30, 2018. The six and a
28 half percent rate increase must be used as a direct benefit for the direct support professional
29 within 60 days from the close of the State Fiscal Year. The following services delivered through
30 Home and Community Based Waivers for Persons with Developmental Disabilities, Supported
31 Living Services, and Children's Extensive Supports will receive the six and half percent increase
32 to reimbursement rates:

33 1. Group Residential Services and Supports;

34 2. Individual Residential Services and Supports;

35 3. Specialized Habilitation;

36 4. Respite;

37 5. Homemaker Basic;

38 6. Homemaker Enhanced;

- 1 7. Personal Care;
- 2 8. Prevocational Services;
- 3 9. Behavioral Line Staff;
- 4 10. Community Connector;
- 5 11. Supported Community Connections;
- 6 12. Mentorship;
- 7 13. Supported Employment- Job Development; And
- 8 14. Supported Employment- Job Coaching.

9 B. Funding from the reimbursement rate increase may not be used for the following:

- 10 1. Executive Salaries
- 11 2. Administrative Expenses
- 12 3. Human Resource Expenses
- 13 4. Information Technology
- 14 5. Oversight Expenses
- 15 6. Business Management Expenses
- 16 7. General Record Keeping Expenses
- 17 8. Budget and Finance Expenses
- 18 9. Workers' Compensation Insurance
- 19 10. Contract Staffing Agency Expenses
- 20 11. Employee Appreciation Events
- 21 12. Gifts
- 22 13. Activities not identifiable to a single program.

23 **8.505.3 REPORTING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONAL RATE INCREASE**

24 A. On or before December 31, 2019, and two (2) years thereafter, employing or contracting service
25 agencies must report and attest to the Department in detail how all of the increased funds
26 received pursuant to Section 25.5-6-406, C.R.S. were used, including information about
27 increased compensation for all Direct Support Professionals, how the employing or contracting
28 service agency maintained the increase, and how the employing or contracting service agency
29 stabilized the direct support professional workforce.

- 30 1. The employing or contracting service agencies must report to the Department, in the
31 manner prescribed by the Department, by December 31 of each year.

1 2. The Department has ongoing discretion to request information from service agencies
2 demonstrating how they maintained increases in compensation for Direct Support
3 Professionals beyond the reporting period.

4 3. Failure to provide adequate and timely reports may result in recoupment of the funds.

5 **8.505.4 AUDITING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONAL RATE INCREASE**
6 **FOR COMPENSATION**

7 A. Each employing or contracted service agency shall keep true and accurate work records to
8 support and demonstrate use of the funds. Such records shall be retained for a period of not less
9 than three (3) years and shall be open to inspection by the Department and are made available to
10 be copied by the Department or its authorized representatives at any reasonable time and as
11 often as may be necessary.

12 B. Employing or contracting service agencies shall submit to the Department upon request, all
13 records showing that the funds were used as a direct benefit for Direct Support Professionals,
14 including but not limited to:

15 1. Federal Employment Forms

16 a. W2's -Wage and Tax Statement

17 b. W3 -Transmittal of Wage and Tax Statement

18 c. 941's -Employer's Quarterly Federal Tax Return

19 d. 940 -Employer's Annual Federal Tax Return

20 2. State Employment Forms

21 a. UETR 1's – State Unemployment Insurance Tax Report

22 b. UETR 1A's - State Unemployment Insurance Tax Report Wage List

23 3. Business/Corporate Tax Returns

24 4. Independent Contractor Forms

25 a. 1099's- Miscellaneous Income

26 b. 1096 - Annual Summary and Transmittal of U.S. Information Returns

27 5. Payroll Records

28 a. Payroll Detail

29 b. Payroll Summary

30 6. Accounting Records

31 a. Chart of Accounts

32 b. General Ledger

1 c. Profit & Loss Statements

2 d. Check Register

3 7. Bank Statements

4 8. Timesheets

5 9. Benefits Records

6 a. Health Insurance Records

7 b. Other Insurance Records

8 c. Paid Time Off Records

9 C. In the event that a Direct Support Professional was hired after June 30, 2018, the employing or
10 contracting service agency shall use the lowest compensation paid to a Direct Support
11 Professional of similar functions and duties as of June 30th, 2018. This is the base rate that the
12 increased compensation will be applied to.

13 D. If the Department determines that the employing or contracting service agency did not use the
14 increased funding as a direct benefit to the Direct Support Professional, within one year after the
15 close of each reporting period, the Department shall notify the service agency in writing of the
16 Department's intention to recoup funds. The service agency has forty-five (45) days after
17 issuance of the notice of the determination to complete any of the following actions:

18 1. challenge the determination of the Department;

19 2. provide additional information to the Department demonstrating compliance;

20 3. submit a Plan of Correction to the Department.

21 E. When the Department determines that an employing or contracting service agency is not in
22 compliance, a Plan of Correction shall be developed, upon written notification by the Department.
23 A Plan of Correction shall include, but not be limited to:

24 1. A detailed description of actions to be taken to resolve issues and supporting
25 documentation demonstrating completion.

26 2. A detailed timeframe specifying the actions to be taken.

27 3. Employee(s) responsible for implementing the actions.

28 4. The implementation timeframes and date(s) for completion.

29 F. The employing or contracting service agency must submit the Plan of Correction to the
30 Department within forty-five (45) business days of the issuance of a written request from the
31 Department. The employing or contracting service agency must notify the Department in writing,
32 within five (5) business days of the receipt of the written request from the Department, if it will not
33 be able to submit the Plan of Correction by the due date. The employing or contracting service
34 agency must explain the rationale for the delay and the Department may grant an extension, in
35 writing, of the deadline for the employing or contracting service agency's compliance.

1 G. Upon receipt of the Plan of Correction, the Department will accept, request modifications, or
2 reject the proposed Plan of Correction. Modifications or rejections will be accompanied by a
3 written explanation. If a Plan of Correction is rejected, the employing or contracting service
4 agency must resubmit a new Plan of Correction along with any requested documentation to the
5 Department for review within five (5) business days of notification.

6 H. The Department shall notify the employing or contracting service agency in writing of its final
7 determination after affording the employing or contracting service agency the opportunity to take
8 the actions specified in Section 8.505.4.E. The Department shall recoup one hundred percent of
9 the increased funding received but did not use for a direct benefit for direct support professionals
10 if the employing or contracting service agency:

11 1. fails to respond to a notice of determination of the Department within the time provided in
12 Section 8.505.4.E;

13 2. is unable to provide documentation of compliance; or

14 3. the Department does not accept the Plan of Correction submitted by the service agency,
15 or is not completed within the established timeframe pursuant to Section 8.505.4.F.

16 I. All recoveries will be conducted pursuant to Section 25.5-4-301, C.R.S. and 10 CCR 2505-10,
17 Section 8.076.3.

