

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. The compensation cannot be used as a direct benefit to the employing 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 service provider to the Department on
20 identified areas of non-compliance with requirements listed at section 25.5-6-406, CRS or 10
21 CCR 2505-10, section 8.500.18.
- 22 E. Payroll tax means taxes that are paid or withheld by the employer on the employee's behalf.
23 These taxes are defined by the Federal Insurance Contributions Act (FICA) comprised of a Social
24 Security tax, Medicare Tax, and Medicare surtax.

25 **8.505.2 REIMBURSEMENT RATE INCREASE**

- 26 A. Effective March 1, 2019, the Department increased reimbursement rates by six and a half percent
27 which is to be reserved for compensation to direct support professionals above the rate of
28 compensation that the direct support professionals received as of June 30, 2018. The six and a
29 half percent rate increase must be used as a direct benefit for the direct support professional
30 within 60 days from the close of the Department fiscal year. The following services delivered
31 through Home and Community Based Waivers for Persons with Developmental Disabilities,
32 Supported Living Services, and Children's Extensive Supports will receive the six and half
33 percent increase to reimbursement rates:
- 34 1. Group Residential Services and Supports;
 - 35 2. Individual Residential Services and Supports;
 - 36 3. Specialized Habilitation;
 - 37 4. Respite;
 - 38 5. Homemaker Basic;
 - 39 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. The Department has determined that utilizing the increased funding as described below does not
10 provide a direct benefit to a direct support professional. This list is not exhaustive but provides
11 guidance to Medicaid providers.

- 12 1. Executive Salaries
- 13 2. Administrative Expenses
- 14 3. Human Resource Expenses
- 15 4. Information Technology
- 16 5. Oversight Expenses
- 17 6. Business Management Expenses
- 18 7. General Record Keeping Expenses
- 19 8. Budget and Finance Expenses
- 20 9. Workers' Compensation Insurance
- 21 10. Contract Staffing Agency Expenses
- 22 11. Employee Appreciation Events
- 23 12. Gifts

24 **8.505.3 REPORTING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONAL RATE INCREASE**

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

- 31 1. The service agencies must report to the Department, in the manner prescribed by the
32 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 report by December 31 of each year will result in the recovery of the six and a
5 half percent for the year which the service agency failed to report. The Department will
6 recoup the funds through the process as prescribed in section 25.5-4-301, CRS and 10
7 CCR 2505-10, section 8.076.3.

8 **8.505.4 AUDITING REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONAL RATE INCREASE**
9 **FOR COMPENSATION**

- 10 A. Each employing provider shall keep true and accurate work records, containing such information
11 as the Department may prescribe. Such records shall be retained for a period of not less than
12 three years and shall be open to inspection and are subject to be copied by the Department or its
13 authorized representatives at any reasonable time and as often as may be necessary. The
14 Department or its authorized representative may require from the employing provider copies of
15 any sworn or unsworn reports, with respect to persons employed by it, which it deems necessary
16 for the effective administration of section 25.5-6-406, CRS.
- 17 B. Information obtained in the administration of section 25.5-6-406, CRS shall be held confidential
18 and shall not be published or be open to public inspection, other than to public employees or
19 authorized representatives in the performance of their public duties.
- 20 C. Employing service agencies shall submit to the Department upon request, all records showing
21 that the six and half percent was used as a direct benefit for direct support professionals, as
22 defined in section 25.5-6-406, CRS including but not limited to:
- 23 1. Federal Employment Forms
- 24 a. W2's -Wage and Tax Statement
- 25 b. W3 -Transmittal of Wage and Tax Statement
- 26 c. 941's -Employer's Quarterly Federal Tax Return
- 27 d. 940 -Employer's Annual Federal Tax Return
- 28 2. State Employment Forms
- 29 a. UITR 1's – State Unemployment Insurance Tax Report
- 30 b. UITR 1A's - State Unemployment Insurance Tax Report Wage List
- 31 3. Tax Returns
- 32 4. Independent Contractor Forms
- 33 a. 1099's- Miscellaneous Income
- 34 b. 1096 - Annual Summary and Transmittal of U.S. Information Returns
- 35 5. Payroll Records
- 36 a. Payroll Detail

- 1 b. Payroll Summary
- 2 6. Accounting Records
- 3 a. Chart of Accounts
- 4 b. General Ledger
- 5 c. Profit & Loss Statements
- 6 d. Check Register
- 7 7. Bank Statements
- 8 8. Personnel Files
- 9 9. Timesheets
- 10 10. Benefits Records
- 11 a. Health Insurance Records
- 12 b. Other Insurance Records
- 13 c. Paid Time Off Records
- 14 D. In the event that a Direct Support Professional was hired after June 30th, 2018, the employing
15 agency shall use the lowest compensation paid to a Direct Support Professional of similar
16 functions and duties as of June 30th, 2018. This is the base rate that the 6.5% compensation
17 increase will be applied to.
- 18 E. If the Department determines that the service agency did not use the funding resulting from the
19 increase in the reimbursement rate as a direct benefit to the Direct Support Professional, within
20 one year after the close of each reporting period, the Department shall notify the service agency
21 in writing of the Department's intention to recoup funds. The service agency has forty-five days
22 after issuance of the notice of the determination to complete any of the following actions:
 - 23 1. challenge the determination of the Department;
 - 24 2. provide additional information to the Department demonstrating compliance;
 - 25 3. submit a plan of correction to the Department.
- 26 F. When the Department determines that a service provider is not in compliance, the service
27 provider, upon written notification by the Department, shall develop a plan of correction. A plan of
28 correction shall include, but not be limited to:
 - 29 1. A detailed description of actions to be taken to resolve issues and supporting
30 documentation demonstrating completion.
 - 31 2. A detailed timeframe specifying the actions to be taken.
 - 32 3. Employee(s) responsible for implementing the actions.
 - 33 4. The implementation timeframes and date(s) for completion.

- 1 G. The service provider must submit the plan of correction to the Department within forty-five (45)
2 business days of the issuance of a written request from the Department. The service provider
3 must notify the Department in writing, within five (5) business days of the receipt of the written
4 request from the Department, if it will not be able to submit the plan of correction by the due date.
5 The service provider must explain the rationale for the delay and the Department may grant an
6 extension, in writing, of the deadline for the service provider's compliance.
- 7 H. Upon receipt of the plan of correction, the Department will accept, request modifications, or reject
8 the proposed plan of correction. Modifications or rejections will be accompanied by a written
9 explanation. If a plan of correction is rejected, the service provider must resubmit a new plan of
10 correction along with any requested documentation to the Department for review within five (5)
11 business days of notification.
- 12 I. If the plan of correction is not accepted by the Department, is not completed within the
13 established timeframes, or is not completed to the quality specified by the Department, the
14 Department may initiate recoveries from the service provider.
- 15 J. The Department shall notify the service agency in writing of its final determination after affording
16 the service agency the opportunity to take the actions specified in subsection 8.500.20.D and
17 8.500.20.E. The Department shall recoup from a service agency one hundred percent of the
18 funding resulting from the increase in the reimbursement rate that the service agency received
19 but did not use for a direct benefit for direct support professionals if:
- 20 1. the service agency fails to respond to a notice of determination of the Department within
21 the time provided in subsection 8.500.20.D;
- 22 2. the service agency is unable to provide documentation of compliance; or
- 23 3. the Department does not accept the plan of correction submitted by the service agency
24 pursuant to subsection 8.500.20. D.3.
- 25 K. All recoveries will be conducted pursuant to section 25.5-4-301, CRS and 10 CCR 2505-10,
26 section 8.076.3.
- 27 L. Employing service agencies shall maintain all books, documents, papers, accounting records,
28 and other evidence required to support the reporting of payroll information for increased
29 compensation to direct support professionals for at least three years from the reporting deadlines.
30 Employing service agencies shall make the information and materials available for inspection by
31 the Department or its authorized representatives at all reasonable times.