

**December 13, 2021**

On November 16, 2021, the Centers for Medicare and Medicaid Services (CMS) approved the Appendix K revision to the Office for People With Developmental Disabilities' (OPWDD) Home and Community Based Services (HCBS) Waiver (NY 0238.R06.07). Similarly, the OPWDD Disaster State Plan Amendment (SPA) has been revised and it is anticipated it will receive federal approval. Both this Appendix K revision and the Disaster SPA revision delineate Workforce Stabilization initiatives, which are intended to address the critical Direct Support Professional and Family Care staffing shortages stemming from the COVID-19 public health emergency. Upon the submission of a signed Attestation by a Provider, the Provider may be entitled to receive Workforce Stabilization supplemental payments for one or more of the following four Workforce Stabilization initiatives:

- COVID Service Payment
- Vaccination Incentive Payment
- Longevity Payment
- Retention Payment

This guidance, and the related Attestation, apply only to the Workforce Stabilization initiatives associated with OPWDD HCBS Waiver, State Plan and other OPWDD-reimbursed programs. Although this Attestation addresses payments associated with these Workforce Stabilization initiatives, such payments are still subject to federal approval.

Each agency wishing to participate in one or more of the OPWDD Workforce Stabilization initiatives must acknowledge and attest that it will adhere to all of the following requirements prior to receiving any supplemental payments:

- The Provider must retain all records necessary to document the distribution of the Workforce Stabilization initiative payments, including but not limited to employee payroll records and proof of vaccination, consistent with the New York False Claims Act and all other applicable state and federal laws and regulations. Such information shall be available in a form and format that will facilitate it being furnished upon request to OPWDD and/or other regulatory authorities.
- The Provider must expend all Workforce Stabilization initiative supplemental payments exclusively for the purpose specifically identified by OPWDD. Payments cannot be comingled and utilized by provider agencies across initiatives. For example, COVID Service Payment resources cannot be used to supplement or supplant Vaccination Incentive Payments. Similarly, HCBS Waiver payments cannot be used to supplement or supplant payments made under State Plan authorities. The supplemental payments made to provider agencies will be inclusive of the funds to be distributed to qualifying staff and any

related mandatory fringe benefit costs.

- The Provider must only distribute Workforce Stabilization initiative supplemental payments to those Direct Support Professionals (DSPs), including contracted staff serving as DSPs, and/or Family Care providers that are appropriately reported as Direct Care staff (job position title code 200 series) in the agency's Consolidated Fiscal Report (CFR) supporting OPWDD-licensed programs/services. If an employee's position is jointly allocated between a 200-299 job position title code and another non-qualifying job position title code, disbursements to that employee shall be based on a proportional allocation of time between the time spent in the direct care position versus another non-qualifying position(s).
- The Provider must expend all Workforce Stabilization initiative supplemental payments, except for Retention Payments, through distributions to eligible DSPs and/or Family Care providers no later than ninety (90) days after receipt of the funds. With respect to Retention Payments, an initial expenditure of funds must be made to eligible DSPs and Family Care providers within ninety (90) days of receiving the funds; the balance of the Retention Payments must be fully expended through distributions to eligible DSPs and/or Family Care providers no later than one hundred eighty (180) days after receipt of the funds.
- The Provider must have made at least one (1) eMedNY claim related to the billing of an HCBS Waiver Service during the period between March 17, 2020 and September 1, 2021 to receive HCBS Waiver funded supplemental payments. Provider claiming of retainer payments including, but not limited to, the COVID-19 Day Service Retainer Program, do not qualify as an eligible service billing.
- The Provider must have made at least one (1) eMedNY claim related to the billing of a State Plan Service during the period between March 17, 2020 and September 1, 2021 to receive State Plan funded supplemental payments. Provider claiming of retainer payments including, but not limited to, the COVID-19 Day Service Retainer Program, do not qualify as an eligible service billing.
- The Provider must submit all reports required by OPWDD in conjunction with these Workforce Stabilization initiatives to enable an evaluation of the effect of the supplemental payments on workforce stabilization in the form and format and within the timeframes delineated by OPWDD.
- If the Provider fails to expend all of the supplemental payments it receives to all of its eligible employees within ninety (90) days of receipt, or within one hundred eighty (180) days of receipt for Retention Payments; or it is determined that the Provider was ineligible to receive the supplemental payments; or the Provider does not participate in the required survey or reporting processes; or in any other

manner, violates the terms and conditions of these Workforce Stabilization initiatives, OPWDD and/or the New York State Department of Health (DOH) will conduct an immediate recoupment or take other action necessary to retrieve up to 100% of the Workforce Stabilization supplemental payments the provider received. At the end of the public health emergency or at the conclusion of participation in the Workforce Stabilization initiatives, all supplemental payments to an agency will be subject to a final reconciliation.

**Additional Initiative-specific Requirements:**

- **COVID Service Payments:** A provider wishing to participate in the COVID Service Workforce Stabilization initiative must acknowledge and attest that it will adhere to the following additional requirements prior to receiving any COVID Service supplemental payments:
  - Providers must complete and return a survey in the form, format and timeframes specified by OPWDD to determine the amounts each provider may be eligible to receive.
  - Providers must distribute payments of a minimum of \$1,000 consistently and equally to each Direct Support Professional (DSP) and Family Care provider that was employed full-time in that capacity for at least ninety (90) days during the period of the first agency payroll that occurred on or after March 17, 2020 through the first agency payroll that occurred on or after September 1, 2021 and is employed by the provider agency on the date the provider agency distributes the COVID Service payments.
  - Providers must distribute payments of a minimum of \$500 consistently and equally to each DSP and Family Care provider that was employed at least, but not fewer than, twenty (20) hours per week for at least ninety (90) days during the period of the first agency payroll that occurred on or after March 17, 2020 through the first agency payroll that occurred on or after September 1, 2021 and is employed by the provider agency on the date the provider agency distributes the COVID Service payments.
  - Providers must distribute payments of a minimum of \$250 consistently and equally to each DSP and Family Care provider that was employed fewer than twenty (20) hours per week for at least ninety (90) days during the period of the first agency payroll that occurred on or after March 17, 2020 through the first agency payroll that occurred on or after September 1, 2021 and is employed by the provider agency on the date the provider agency distributes the COVID Service payments.
  - Employee use of Sick Leave and other Paid Time Off during the period

shall count toward the ninety (90) day employment requirement.

- Each eligible DSP and Family Care provider cannot receive COVID Service Payments that in total exceed the amount distributed to a full-time employee.
- Vaccination Incentive Payments: A provider wishing to participate in the Vaccination Incentive Workforce Stabilization initiative must acknowledge and attest that it will adhere to the following additional requirements prior to receiving any Vaccination Incentive supplemental payments:
  - Providers must complete and return a survey in the form, format and timeframes specified by OPWDD to determine the amounts each provider may be eligible to receive.
  - Providers must distribute payments of a minimum of \$500 consistently and equally to each Direct Support Professional (DSP) and Family Care provider that was employed full-time and has completed the COVID-19 vaccination regimen as of the first complete agency payroll that ends on or after January 14, 2022 and is employed by the provider agency on the date the provider agency distributes the Vaccination Incentive payments.
  - Providers must distribute payments of a minimum of \$250 consistently and equally to each DSP and Family Care provider that was employed at least, but not fewer than, twenty (20) hours per week and has completed the COVID-19 vaccination regimen as of the first complete agency payroll that ends on or after January 14, 2022 and is employed by the provider agency on the date the provider agency distributes the Vaccination Incentive payments.
  - Providers must distribute payments of a minimum of \$125 consistently and equally to each DSP and Family Care provider that was employed fewer than twenty (20) hours per week and has completed the COVID-19 vaccination regimen as of the first complete agency payroll period that ends on or after January 14, 2022 and is employed by the provider agency on the date the provider agency distributes the Vaccination Incentive payments.
  - Each eligible DSP and Family Care provider cannot receive Vaccination Incentive Payments that in total exceed the amount distributed to a full-time employee.
  - Providers must retain employee vaccination documentation and furnish it upon request to OPWDD and/or other regulatory agencies. Complete documentation must be legible and must include the manufacturer, lot

number(s), date(s) of vaccination, and vaccinator or vaccine clinic site. The following are acceptable forms of documentation of vaccination:

- Centers for Disease Control (CDC) Vaccine Card;
  - World Health Organization (WHO) Yellow Card;
  - Documentation of COVID-19 vaccination from a licensed health care provider; or
  - Digital record, such as the New York State Excelsior Pass, that includes a Quick Response (QR) code which, when scanned by a SMART Health Card reader, displays to the reader the vaccine recipient's name, date of birth, vaccine date(s) and vaccine type.
- Longevity Payments: A provider wishing to participate in the Longevity Workforce Stabilization initiative must acknowledge and attest that it will adhere to the following additional requirements prior to receiving any Longevity supplemental payments:
    - Providers must distribute payments to each Direct Support Professional (DSP) and Family Care provider that was employed at some point during the period of April 1, 2020 through March 31, 2021 and continued to be employed by the provider agency through the first complete payroll that ended on or after September 1, 2021 and is employed by the provider agency on the date the provider agency distributes the Longevity Payments.
    - The payments must be in the form of a one-time salary increase. Enhancements to, or payments for, Fringe Benefits are not an acceptable use of supplemental payments made to providers, unless related to the mandatory Fringe Benefit costs associated with the one-time salary increase.
    - For Direct Support Professionals (DSPs) employed directly by an OPWDD provider, providers must distribute payments to eligible DSPs such that each DSP receives a payment which represents an identical percentage increase calculated relative to their annual base salary. The formula is: (total amount of Longevity Payment received) divided by (1 plus the agency mandated fringe benefit percentage) divided by (aggregate base annual salaries for all DSPs eligible for the Longevity Payment) = "Payment Distribution %." For allocated employees, only that portion of the base salary allocated to the CFR job position code 200 series is to be utilized. Each DSP's Longevity Payment is their base annual salary (or allocated base salary) multiplied by the "Payment Distribution %."
    - Providers must distribute payments to Family Care providers based on the Difficulty of Care payment level; sponsoring agencies shall not retain any

portion of the payments to Family Care providers. Each Family Care provider shall receive the equivalent of a one-time 20% increase to the Difficulty of Care payments, based on paid claims activity for the period of September 1, 2020 through August 31, 2021.

- For DSPs for whom the Fiscal Intermediary is the employer of record, each such DSP shall receive an identical percentage increase calculated relative to the salary they received for the hours worked during the period of September 1, 2020 through August 31, 2021. The formula is: (total amount of Longevity Payment received) divided by (1 plus the agency mandated fringe benefit percentage) divided by (aggregate annual salaries paid for hours worked for all DSPs eligible for the Longevity Payment) = "Payment Distribution %." Each DSP's Longevity Payment is the compensation they received for the hours worked during the period of September 1, 2020 through August 31, 2021 multiplied by the "Payment Distribution %."
- Retention Payments: A provider wishing to participate in the Retention Workforce Stabilization initiative must acknowledge and attest that it will adhere to the following additional requirements prior to receiving any Retention supplemental payments:
  - Providers must distribute payments to each Direct Support Professional (DSP) and Family Care provider that is employed at some point during the period of April 1, 2021 through March 31, 2022 and continued to be employed by the provider agency through the first complete payroll that ended on or prior to March 31, 2022 and is employed by the provider agency on the date the provider agency distributes the Retention Payments.
  - The payments must be in the form of a one-time salary increase. Enhancements to, or payments for, Fringe Benefits are not an acceptable use of supplemental payments made to providers, unless related to the mandatory Fringe Benefit costs associated with the one-time salary increase.
  - For Direct Support Professionals (DSPs) employed directly by an OPWDD provider, providers must distribute payments to eligible staff in accordance with either the methodology described in paragraph (a) or paragraph (b) as follows:
    - a. Each DSP receives an identical percentage increase calculated relative to their annual base salary. The formula is: (total amount of Retention Payment received) divided by (1 plus the agency mandated fringe benefit percentage) divided by (aggregate base annual salaries for all DSPs eligible for the Retention Payment) =

“Payment Distribution %.” For allocated employees, only the portion of the base salary allocated to the CFR job position code 200 series is to be utilized. Each DSP’s Retention Payment is their base annual salary (or allocated base annual salary) multiplied by the “Payment Distribution %.”

- b. Each DSP receives a percentage increase in accordance with an agency-specific Distribution Plan to address its own unique recruitment and retention challenges. The Distribution Plan must specifically detail the methodology the Provider will utilize to distribute Retention Payments to eligible DSPs. The Distribution Plan must stipulate a minimum level of Retention Payment for each eligible DSP that was employed at some point during the period of April 1, 2021 through March 31, 2022 and continued to be employed by the Provider through the first complete payroll that ends on or prior to March 31, 2022 and is employed by the provider agency on the date the provider agency distributes the Retention Payments. The Distribution Plan must be in the form of a document that is signed by the agency’s Chief Executive Officer (CEO)/Executive Director and an officer of the agency’s Board of Directors/Governing Body. The signed Distribution Plan must be made available and clearly communicated to all employees prior to payment. The Distribution Plan, including all supporting payroll records, must be retained by the provider and furnished upon request to OPWDD and/or other regulatory agencies.
- Providers must distribute payments to Family Care providers based on the Difficulty of Care payment level; sponsoring agencies shall not retain any portion of the payments to Family Care providers. Each Family Care provider shall receive the equivalent of a one-time 20% increase to the Difficulty of Care payments, based on claiming activity for the period of September 1, 2020 through August 31, 2021.
- For DSPs for whom the Fiscal Intermediary is the employer of record, each such DSP shall receive an identical percentage increase calculated relative to the salary they received for the hours worked during the period of September 1, 2020 through August 31, 2021. The formula is: (total amount of Retention Payment received) divided by (1 plus the agency mandated fringe benefit percentage) divided by (aggregate annual salaries paid for hours worked for all DSPs eligible for the Retention Payment) = “Payment Distribution %.” Each DSP’s Retention Payment is the compensation they received for the hours worked during the period of September 1, 2020 through August 31, 2021 multiplied by the “Payment Distribution %.”

- This *completed* Attestation must be submitted to OPWDD no later than January 9, 2022 in order to qualify for any of the OPWDD Workforce Stabilization initiatives. Completed attestations must be submitted to OPWDD electronically at: [opwdd.sm.COVIDattestation@opwdd.ny.gov](mailto:opwdd.sm.COVIDattestation@opwdd.ny.gov).

The agency agrees to the above terms and conditions identified in the preceding pages and will participate in one or more of the OPWDD HCBS Waiver, State Plan (subject to federal approval) and other OPWDD-reimbursed Workforce Stabilization Initiatives. The agency understands that OPWDD reserves the right to request additional information and that your agency's continued participation in and retention of payments derived from the OPWDD Workforce Stabilization Initiatives is subject to ongoing compliance with the above requirements and any subsequent guidance that may be given.

Agency Name:

Name of Agency Board of Directors/Governing Body Chairperson:

Signature:

Date Signed:

Name of CEO or Executive Director:

Signature:

Date signed:

Agency Corporation ID: