To: Bureau of Developmental Disabilities Services waiver providers, direct care staff, families and other stakeholders  
From: Kylee Hope, Director of the Division of Disability of Rehabilitative Services  
Cathy Robinson, Director of the Bureau of Developmental Disabilities Services  
Re: Implementation Information of Indiana Code 12-15-1.3-18 – Reimbursement Rate Increase to Improve Direct Care Staff Wages  
Date: August 22, 2017

Individuals with intellectual or developmental disabilities (I/DD) and their families rely on direct care staff every day to provide necessary supports and services through the Family Supports Waiver (FSW) and the Community Integration and Habilitation (CIH) Waiver administered through the Division of Disability and Rehabilitative Services (DDRS), Bureau of Developmental Disabilities Services (BDDS). As with many states, Indiana recognizes the need for a high-quality workforce to provide critical care and supports in order for individuals to receive home and community based services in settings that are integrated and that support full access to the greater community. While the workforce shortage for direct care staff is complex, one targeted area to assist in addressing staff turnover is wages.

Due to the joint effort of The Arc of Indiana and the Indiana Association of Rehabilitation Facilities (INARF), the Indiana General Assembly passed House Enrolled Act 1001 which mandated a 5 percent rate increase for specific services1 provided under the FSW and CIH waivers with the intent to use the rate increase to increase wages for direct care staff. The legislation requires an authorized provider to use at least 75 percent of the amount of the increase to the reimbursement rate to increase the wages paid to direct care staff. If a provider does not use at least 75 percent of the increase to the reimbursement rate to increase direct care staff wages, the Office of the Secretary of Indiana’s Family and Social Services Administration (FSSA) agency shall recoup the difference between the rate reimbursement and the amount that provider actually used to pay increased wages to direct care staff. A provider may retain the remaining 25 percent to be used for employer-related costs of providing direct care services. This legislation has been codified under Indiana Code 12-15-1.3-18 (see Attachment A).

In preparation for implementation, BDDS has completed the FSW and CIH waiver amendments, released the amendments for public comment, and plans to submit the amendments to the Centers for Medicare and Medicaid Services (CMS) by September 1, 20172. The effective date will be prospective and contingent upon CMS approval. FSSA/BDDS has requested an expedited review by CMS with the goal of

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1 The specific services impacted include the following: adult day services, prevocational services, residential habilitation and support, respite, supported employment and extended services, community habilitation and participation services, workplace assistance, facility habilitation, residential habilitation and support (RHS daily), transportation services, participant assistance and care, and facility based support.
2 The language in the bill requires an amendment to be submitted on or before September 30, 2017.
achieving an October 1, 2017, effective date. Any delays in implementation will be communicated to stakeholder. While Indiana Code 12-15-1.3-18 requires a rate increase for the outlined services, it also stipulates required actions for all authorized providers related to notifications and use of the rate increase. Specifically, IC 12-15-1.3-18(f) requires all providers to submit written and electronic notification of its plan to increase wages to: 1) direct care staff employed by the provider; and 2) the Office of the Secretary of FSSA within 30 days after the office implements an increase in the reimbursement rates. In order for the FSSA to monitor compliance of IC 12-15-1.3-18, the statute provides details regarding the information providers must maintain to document their compliance. FSSA reserves the right to audit providers to ascertain whether they have utilized the 5 percent rate increase in the manner required by the legislation.

To facilitate the successful implementation of IC 12-15-1.3-18, FSSA/BDDS coordinated with FSSA Audit, The Arc of Indiana and INARF to develop the attached guidance related to the providers’ plan development and submission requirements to assist providers in implementing the rate increase (see Attachment B).
IC 12-15-1.3-18 Reimbursement rates for federal home and community based services program; direct care staff compensation; procedures; documentation

Sec. 18. (a) The definitions set forth in 460 IAC 6-3 as of January 1, 2017, apply to the terms that are used in this section.

(b) The office of the secretary shall increase the reimbursement rate for services if the services are provided as follows:

(1) The services are provided to an individual who receives services under a Medicaid waiver under the federal home and community based services program.

(2) The individual is authorized under the Medicaid waiver described in subdivision (1) to receive any of the following services:

(A) Adult day services.

(B) Prevocational services.

(C) Residential habilitation and support.

(D) Respite.

(E) Supported employment and extended services as defined in the family supports Medicaid waiver.

(F) Community habilitation and participation services.

(G) Workplace assistance, as defined in the family supports Medicaid waiver and the community integration habilitation Medicaid waiver.

(H) Facility habilitation.

(I) Residential habilitation and support (RHS daily).

(J) Transportation services.

(K) Participant assistance and care, as defined in the family supports Medicaid waiver.

(L) Facility based support, as defined in the family supports Medicaid waiver and the community integration habilitation Medicaid waiver.

(3) The services are delivered to the individual by a direct care staff.

(c) The amount of the increase in the reimbursement rate described in subsection (b) for a state fiscal year beginning July 1, 2017, or thereafter is the reimbursement rate in effect as of June 30, 2017, for the services listed in subsection (b)(2) multiplied by five percent (5%).

(d) An authorized service provider shall use at least seventy-five percent (75%) of the amount of the increase in the reimbursement rate to increase the wages paid to direct care staff who:

(1) are employed by the authorized service provider to provide services in Indiana; and

(2) provide support services listed in subsection (b)(2).
(e) If a provider does not use at least seventy-five percent (75%) of the increase to increase wages paid to direct care staff, the office shall recoup part or all of the increase in the reimbursement rate that the provider receives as provided in subsection (g).

(f) An authorized service provider providing services in Indiana shall provide written and electronic notification of its plan to increase wages to:

1. direct care staff employed by the provider; and
2. the office of the secretary;

within thirty (30) days after the office implements an increase in reimbursement rates.

(g) The office may recoup the difference between seventy-five percent (75%) of the amount received by a provider as a result of increased reimbursement rates and the amount of the increase that is actually used by the provider to pay an increase in wages to direct care staff. The remaining twenty-five percent (25%) may be retained by the provider to cover the other employer related costs of providing direct care services, including payroll taxes, benefits, and paid time for nondirect services such as paid time off and training.

(h) Providers shall maintain all books, documents, papers, accounting records, and other evidence required to support the reporting of payroll information for increased wages to direct care staff. Wages are defined as total compensation less overtime and shift differential for direct care staff providing services to individuals receiving the services described in subsection (b)(2) as reported on the provider’s payroll records. Providers shall make these materials available at their respective offices at all reasonable times and for three (3) years from the date of final payment for the services listed in subsection (b)(2) for inspection by the state or its authorized designees. Providers shall furnish copies at no cost to the state if requested.

(i) The office or its designee may recoup all or a part of the amount paid using the increased reimbursement rates based upon an audit or review of the supporting documentation required to be maintained under subsection (h) if the provider cannot provide adequate documentation to support the increased wages to direct care staff.

(j) If required, the office shall file Medicaid waiver amendments for the family supports Medicaid waiver and the community integration and habilitation Medicaid waiver related to rate increases and Medicaid waiver caps only on or before September 30, 2017, with the earliest possible effective date allowed by the federal Centers for Medicare and Medicaid Services. If the federal Centers for Medicare and Medicaid Services deny the Medicaid waiver amendments, the office may modify the waiver amendment request. If a waiver amendment is not approved, rate increases may not be granted under this section.

(k) This section may not be construed as creating an employment relationship of any kind between office staff and direct care staff of an authorized service provider.

As added by P.L.217-2017, SEC.78.
ATTACHMENT B:

Family Social Services Administration, Division of Disability and Rehabilitative Services
Guidance for Implementation of Indiana Code 12-15-1.3-18

Required Activity by Provider: IC 12-15-1.3-18(f): An authorized service provider providing services in Indiana shall provide written and electronic notification of its plan to increase wages to:

(1) direct care staff employed by the provider; and

(2) the office of the secretary;

within thirty (30) days after the office implements an increase in reimbursement rates.

The plan components shall include, but not limited to the following information:

Section I: Authorized Provider General Information:
- Submission date of plan;
- Legal and Doing Business As (DBA) name of provider;
- Provider street address, city, state zip, phone and email of the individual in the provider agency who is responsible for the implementation of IC 12-15-1.3-18 and who could answer any questions. (Multiple emails may be provided);
- Provider Fiscal Year;
- Name of CEO/Executive Director;
- Provider Employee Identification Number (EIN);
- Provider Medicaid Number utilized for claim submission to CoreMMIS.

Note: Providers who have multiple EIN’s or who have multiple sites doing business under difference legal or DBA shall submit separate plans for each legal entity.

Section II: Method for Implementation:
- List the positions (by title) within your agency that will receive a wage increase based on the rules set forth in IC 12-15-1.3-18.
- Outline the waiver services outlined in IC 12-15-1.3-18 that the agency provides.
- Describe the methodology (e.g. wages, bonuses) the agency will use to calculate the amount of the wage increases that will be provided to the positions listed above.
- Outline the information the agency will use to calculate the revenue from the rate reimbursement increase and how it will calculate the 75% required for wage increases.
- Outline the agency’s plan to self-monitor its compliance with IC 12-15-1.3-18, including a description of the documentation that the agency shall maintain to document its compliance.
- Identify how the agency will utilize the 25% of the rate increase that is not required to go to direct care staff (12-15-1.3-18(g)).
- Identify how the agency will inform direct care staff about the wage increase.
- Stipulate the effective date of the wage increase.

Include a copy of the written notification that will be provided to the agency’s employees.
Submission Information:
DDRS encourages providers to be proactive in developing their plans; however, providers will not be required to submit the plans until 30 days after the approved effective date.

An Excel spreadsheet with guidance regarding direct care staff wage calculations may be found on the DDRS Announcements Web page.

Please submit the plan with a copy of the written notification to employees to the following email address: Rateincreaseplan@fssa.IN.gov

For questions, please contact: Rateincreaseplan@fssa.IN.gov