

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide an annual payment to eligible providers of direct services to individuals with intellectual and developmental disabilities for the purpose of ensuring direct support professionals a living wage, to require the Director of the Department of Health Care Finance and the Director of the Department on Disability Services to determine the amount of the annual payment, and to require the Mayor to issue rules to implement this act, including establishing eligibility requirements for a provider to receive the annual payment and rules relating to enforcement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Direct Support Professional Payment Rate Act of 2020”.

Sec. 2. Definitions.

For the purpose of this act, the term:

(1) “Developmental disability” shall have the same meaning as provided in section 102(8) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, approved October 30, 2000 (114 Stat. 1682; 42 U.S.C. § 15002(8)).

(2) “Direct services” means residential, in-home, day, or support services, including employment and community development services, under the District’s Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities program as authorized by section 1915(c) of the Social Security Act, approved August 13, 1981 (95 Stat. 809; 42 U.S.C. § 1396n(c)) or the Intermediate Care Facilities for Individuals with Intellectual Disabilities program as authorized by section 1905(d) of the Social Security Act, approved December 28, 1971 (85 Stat. 809; 42 U.S.C. § 1396d(d)).

(3) “Direct support professional” means an employee of a service provider who provides direct services to individuals with developmental disabilities for at least 50% percent of the employee’s work hours.

(4) “Service provider” means an entity that provides direct services to individuals with developmental disabilities.

Sec. 3. Payment.

On an annual basis, the Mayor shall disburse to each eligible service provider an amount of money as determined annually by the calculation provided in section 4. The eligible service provider shall then distribute the dispersed money in its entirety to its direct support professionals.

Sec. 4. Calculating the annual payment.

(a)(1) The Director of the Department of Health Care Finance (“DHCF”) and the Director of the Department on Disability Services (“DDS”) shall, by October 1 of each year, submit a written joint determination to the Mayor and Council on the total payment amount to be provided to each eligible service provider for the upcoming year pursuant to section 3.

(2) The total payment amount shall equal, on average, the greater of either 117.6% of the District minimum wage pursuant to section 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003) (“Minimum Wage Act”), or 117.6% of the District living wage pursuant to the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*) (“Living Wage Act”).

(b) In determining the total annual payment amount to be provided to each eligible service provider, DHCF’s and DDS’s written joint determination shall expressly consider the following criteria:

(1) The District reimbursement rates to service providers under the District’s Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities program and the Intermediate Care Facilities for Individuals with Intellectual Disabilities program;

(2) The total cost that a service provider incurred during the previous year in providing direct services, including wages; and

(3) The additional operating support that a service provider needs to allow it to pay its direct support professionals, on average, the greater of either 117.6% of the District minimum wage pursuant to the Minimum Wage Act, or 117.6% of the District living wage pursuant to the Living Wage Act.

(c) It shall not be a violation of this act for service providers to pay individual direct support professionals more or less than 117.6% of the District living wage or the District minimum wage if the service providers create a tiered compensation schedule that considers the direct support professional’s qualified experience in the field and their demonstrated competency.

Sec. 5. Eligibility for payment.

(a) To qualify for payment pursuant to section 3, a service provider shall meet eligibility requirements established by rules issued by the Mayor pursuant to section 6.

(b) Each year subsequent to the first year of payment, a service provider that received payment pursuant to section 3 the prior year shall demonstrate to DHCF that it paid its direct support professionals the prescribed hourly rate for that year as determined by section 4 in the service provider's operating budget cycle, inclusive of overtime wages and bonuses, to remain eligible for payment for the current year.

Sec. 6. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act, including rules relating to enforcement of this act and relating to fines and penalties for failure to comply with any provision of this act.

Sec. 7. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 9. Effective date.

This act shall take effect after approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia