

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA  
*Plaintiff,*

v.

C.A. No. 1:13-cv-00442-JJM-PAS

STATE OF RHODE ISLAND  
*Defendant.*

**DEFENDANT, STATE OF RHODE ISLAND'S MOTION TO ENTER ORDER**

Now comes the State of Rhode Island and moves for this Court to enter an order pursuant and in response to the fact-finding hearing held before this Court on November 24, 2020. Specifically, the State of Rhode Island moves for an order relative to the I/DD Provider Support Program, following an agreement reached between the State of Rhode Island and relevant Stakeholders. In support of its motion, the State of Rhode Island relies upon its memorandum of law, attached hereto and incorporated herein.

Wherefore, Defendant respectfully request that this motion be granted and that the order, attached as Exhibit B be entered.

Defendant,  
By their Attorneys,

/s/ Marc DeSisto

/s/ Kathleen A. Hilton

Marc DeSisto, Esq. (#2757)

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CERTIFICATE OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 21<sup>st</sup> day of December 2020 and is available for viewing and downloading from the ECF system.

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/s/ Marc DeSisto

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UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA  
*Plaintiff,*

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C.A. No. 1:13-cv-00442-JJM-PAS

STATE OF RHODE ISLAND  
*Defendant.*

**DEFENDANT, STATE OF RHODE ISLAND’S MEMORANDUM IN SUPPORT OF  
THEIR MOTION TO ENTER ORDER<sup>1</sup>**

On November 24, 2020, this Court, at the recommendation of the Court Monitor for the Consent Decree, Dr. A. Anthony Antosh (“Dr. Antosh”), directed the State of Rhode Island to work with the Providers and others in a collaborative attempt to reach agreement on an appropriate Order allowing for additional funding to the Providers to address the immediate crisis brought on by the COVID-19 pandemic. To facilitate and coordinate this collaborative attempt, Dr. Antosh scheduled three meetings with stakeholders. For each session, Dr. Antosh identified steps to reach an ultimate agreement. In addition, Dr. Antosh encouraged the stakeholders to work together outside of the three scheduled meetings.

In attendance during each of these three scheduled meetings were representatives of the State from the Governor’s office, EOHHS, BHDDH, OMB, DOA. Additionally, members of the General Assembly were active participants in the robust discussions and negotiations. Counsel for the United States of America from the Department of Justice also attended all three sessions. Finally, the Community Provider Network of Rhode Island (“CPNRI”), a non-profit trade association for Rhode Island agencies that support people in intellectual and developmental

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<sup>1</sup> Due to the recent CRF extension, the State may seek to modify the order and program guidance upon subsequent motion.

disabilities, as well representatives from other provider agencies were active participants in these sessions.

After considerable time, effort and collaboration, the State has reached agreement with CPNRI. A number of other providers, not associated with CPNRI, have also reached the same agreement.

Utilizing a portion of funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Stakeholders have agreed to the creation of the I/DD Provider Support Program, a grant program to promote not only provider recovery and resiliency, but also address challenges with consumer access during the current COVID- 19 pandemic. The I/DD Provider Support Program is more particularly described in Exhibit A, attached hereto and incorporated herein. The I/DD Provider Support Program is intended to address the crisis in I/DD service continuum caused or exacerbated by the COVID-19 public health emergency. The goal of the I/DD Provider Support Program is to support residential provider response.

The I/DD Provider Support Program is established as a partnership initiative to provide additional financial assistance for adult residential and community I/DD service providers in Rhode Island. These grant funds are an additional measure to be used as secondary to other federal coronavirus relief funding received by I/DD residential and community providers, and other funding resources made available by the State over the duration of the COVID-19 response.

As a result of COVID-19, the costs of delivering services and preserving system capacity have increased while revenues have declined throughout the I/DD service array. The I/DD Provider Support Program will distribute a total of up to \$10 million in funding, via a grant process, to adult I/DD providers in Rhode Island who are licensed by BHDDH. These grants will

allow providers to remain viable through the public health emergency, mitigating the impact of the current pandemic.

The State now respectfully requests that the Court enter the order, attached hereto as Exhibit B. In the alternative, the State requests a hearing, if an objection is filed by the Department of Justice or if any other entity or individual voices an objection or concern.

Defendant,  
By their Attorneys,

/s/ Marc DeSisto

/s/ Kathleen A. Hilton

Marc DeSisto, Esq. (#2757)

Kathleen A. Hilton, Esq. (#9473)

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CERTIFICATE OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 21<sup>st</sup> day of December 2020 and is available for viewing and downloading from the ECF system.

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/s/ Marc DeSisto



**COVID-19 Coronavirus Relief Fund Program**  
State of Rhode Island, December 21, 2020

# I/DD Provider Support Program Guidance

## Table of Contents

- 1   Executive Summary..... 2**
- 2   Program Overview ..... 3**
  - 2.1   Program Description and Funding Distribution Methodology.....3**
  - 2.2   Funding Distribution Methodology .....3**
- 3   Program Details ..... 3**
  - 3.1   Funding, Application, and Reporting Timelines.....3**
  - 3.2   Eligible Applicants .....4**
  - 3.3   Program Attestation .....4**
  - 3.4   Financial Controls and Reporting .....4**
  - 3.5   Uses of Funds.....4**
- 4   In Closing..... 5**



**COVID-19 Coronavirus Relief Fund Program**  
State of Rhode Island, December 21, 2020

## 1 Executive Summary

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 designated aid for state governments to support COVID-19 efforts. Rhode Island is using a portion of that funding to create the **I/DD Provider Support Program**, a grant program to promote not only provider recovery and resiliency, but also address challenges with consumer access during the current COVID-19 pandemic. The I/DD Provider Support Program is intended to address the crisis in I/DD service continuum caused or exacerbated by the COVID-19 public health emergency. The goal of the I/DD Provider Support Program is to support residential provider response.

**The COVID-19 public health emergency has had a significant second order impact on I/DD provider revenues and utilization.** When the high rate of spread of COVID-19 in the state became more apparent, some consumers and their families began seeking alternative care settings, including some existing residents. In addition, community and day program services were either suspended or had to reduce capacity to respond to the current pandemic. The result for programs was a decline in utilization while also incurring increased costs due to COVID-19. As a result, many I/DD organizations are in financial distress.

**COVID has increased operating costs, including personnel expenses for all providers within the I/DD continuum, increasing the risk of destabilization of the array of available I/DD services.** It was reported at the outset of the pandemic that the fiscal impact to the majority of the providers within the I/DD community were incurring a fiscal impact of nearly \$1.0 million per month, after accounting for lost revenue and new extra direct costs incurred (PPE, reopening, etc.).

**Rhode Islanders living with intellectual and developmental disabilities -- one of the state's most vulnerable populations -- have been disproportionately affected by the COVID-19 pandemic.** Adults with disabilities have, in large part, received services in large group settings pre-COVID-19. Due to the vulnerabilities and poor outcomes associated with COVID-19 infection in this population, an increase in the availability of and access to home-based and small group service delivery is needed. Homebased service alternatives require a large and flexible workforce.

**Providers must deliver individualized and/or small group service models to accommodate COVID-19 public health precautions.** This in turn has created a more significant fiscal burden on those provider organizations who deliver community-based services. The nature of the pandemic has either required that these programs close and/or significantly reduce capacity, which has resulted in lower revenues to sustain their workforce and operations.

**Finally, we know that some I/DD consumers with pre-existing health conditions are particularly susceptible to the virus and could lead to them ending up in a hospital setting when they otherwise could be cared for in a less restrictive setting.** During the public health emergency we need to ensure that hospital beds are available for the sickest patients. Therefore, creating opportunities for I/DD providers to meet the needs of I/DD consumers within its existing service array is not only a priority of the I/DD community, but also from a public health perspective for the state of Rhode Island.



**COVID-19 Coronavirus Relief Fund Program**  
State of Rhode Island, December 21, 2020

## 2 Program Overview

### 2.1 Program Description and Funding Distribution Methodology

The **I/DD Provider Support Program** is established as a partnership initiative to provide additional financial assistance for adult residential and community I/DD service providers in Rhode Island. These grant funds are an additional measure to be used as secondary to other federal coronavirus relief funding received by I/DD residential and community providers, and other funding resources made available by the State over the duration of the COVID-19 response.

As a result of COVID-19, the costs of delivering services and preserving system capacity have increased while revenues have declined throughout the I/DD service array. The **I/DD Provider Support Program** will distribute a total of up to \$10 million in funding, via a grant process, to adult I/DD providers in Rhode Island who are licensed by BHDDH. These grants will allow providers to remain viable through the public health emergency, mitigating the impact of the current pandemic. This document is intended to provide an overview of the goals of the program, the application process and eligibility and evaluation criteria.

### 2.2 Funding Distribution Methodology

Providers will be required to submit an attestation to the state that specifies the provider's specific award calculation, which will be based on both a template and data to be provided by the state. The provider attestation will specify the award calculation, intended to serve as an offset to lost revenue. For purposes of this award, lost revenue will be determined on the basis of the difference between authorization and spend data during the period of the public health emergency which occurred between July 1, 2020 and December 30, 2020.

Award calculations are based on the following formula:

$$\text{LOST REVENUE} = \text{TOTAL SERVICE AUTHORIZATIONS (\$ amount)} - \text{EXPENDITURES}$$

The final allocation of grant funding will be prorated to remain within the \$10M fund and the state will apply a formula to ensure that a prorated share of the \$10M is fairly and equitably distributed to each participating provider. Furthermore, if all eligible providers do not choose to apply, the state will redistribute their share of the \$10M award to the entire population of providers who choose to participate in the program to ensure that the full, budgeted amount is deployed.

## 3 Program Details

### 3.1 Funding, Application, and Reporting Timelines

Key dates for I/DD Provider Support program are as follows:

- **December 21, 2020:** Program guidance and attestations emailed to providers
- **December 23:** Deadline to submit questions about the application to [OHHS.IDDAccessProgram@ohhs.ri.gov](mailto:OHHS.IDDAccessProgram@ohhs.ri.gov)
- **December 28, 2020** Attestations due to the State at 12pm.
- **January 8, 2021:** Funding is anticipated to be available by this date and paid via the MMIS.
- **January 30, 2021:** Post award reporting is due. The state will create a reporting template for providers to account for the receipt and use of other funds intended to offset lost revenue during the public health emergency, such as HRSA dollars that will be due after the grant funds are distributed. The state will work collaboratively with providers to ensure that this requirement is supported by the state and met by each participating provider.





**COVID-19 Coronavirus Relief Fund Program**  
State of Rhode Island, December 21, 2020

### 3.2 Eligible Applicants

Grant funding through the **I/DD Provider Support Program** will be made available to all BHDDH licensed residential and community providers in the I/DD system that demonstrate revenue loss. These programs must be in operation as of December 1, 2020. Specifically, these programs are required to be licensed by BHDDH as DDOs (“DDO Programs”). These DDO Programs provide an array of services, including residential programming as well as community based support services to eligible Medicaid beneficiaries as an alternative to the use of higher risk congregate care settings, and as a result serve to mitigate potential exposure to COVID-19 during the pandemic. Furthermore, eligible providers will need to agree to the program attestations and reporting requirements (outlined below).

### 3.3 Program Attestation

In order to receive funding from this program, eligible providers must submit a signed attestation to the State. The document will require agreement to a section of attestations:

The attestations that applicants must agree to are listed below:

1. **Use of Funds** – Applicants must commit to using funds as outlined below in section 3.4 (Uses of Funds), which will also be outlined in the attestation document.
2. **Award Calculation** – Applicants must agree to the methodology and calculation for grant award funds as outlined in the attestation. Additionally, this will serve as an acknowledgement that they are in agreement with this methodology to determine revenue loss during the public health emergency, beginning July 1, 2020. **All funding determinations are final and non-negotiable.**
3. **Shared Goal Commitment** – it is a priority of the state that these dollars, to the extent possible, be utilized in a manner that promote, 1.) the preservation of and increase access to services by all I/DD consumers in Rhode Island, and 2.) support of frontline workers who provide direct services to those in the I/DD community. Moreover, it is required that recipients of this award, maintain the following access standards:
  - A. To continue to provide essential services to beneficiaries;
  - B. To make reasonable attempts to not lay off over fifty (50) percent of employees;
  - C. To remain in contact with beneficiaries served by the DDO to determine health and safety needs and develop alternative service delivery strategies and modalities, outreach through telephonic service and technology to facilitate, when possible, community outreach and support. The purpose of which is to maintain routine and reduce isolation and risk to participants.
  - D. To comply with all public health recommendations, regarding COVID-19, as applicable.
  - E. That for beneficiaries receiving supports and services through Shared Living Arrangements or through a residential program, the provider shall ensure that the beneficiary served receives sufficient and adequate funding and service levels.

### 3.4 Financial Controls and Reporting

Applicants must agree to retain and track funds and expenditures in a separate operating account consistent with sound grant management practices; provide periodic status and financial reports in a format approved by EOHHS and DOA, and respond to state auditing requests as needed.

### 3.5 Uses of Funds



### **COVID-19 Coronavirus Relief Fund Program**

State of Rhode Island, December 21, 2020

- Costs to prevent, prepare for, or respond to coronavirus, including supplies and equipment used to provide care to possible or actual COVID-19 patients, workforce training, personal protective equipment, reporting COVID-19 test results; and undertaking COVID-19 infection control procedures.
- Costs resulting from the business interruption resulting from COVID-19, including lost revenue as defined above as well as any costs that enable the applicant to continue to deliver care during the pandemic, including typical payroll and benefits, rent or mortgage payments, equipment lease payments, and other standard operating expenses, including but not limited to:
  - Payroll support (standard and can include hazard pay, but not required)
  - Contract staffing costs (standard and COVID-related)
  - Payroll tax
  - Pension match
  - Workers' compensation costs
  - Unemployment insurance
  - Personal protective equipment
  - Cleaning/janitorial expenses and supplies (standard and COVID-related)
  - Other COVID-specific costs not listed above, such as temporary housing for staff and clients

Once funds are disbursed, providers are required to keep financial records demonstrating that funds received are spent in accordance with award requirements, as recipients of these funds will be subject to reporting and audit requirements. In the event of an audit, if the facility is found to have used funds for ineligible expenses, the facility will be considered in violation of the grant agreement at which point BHDDH will begin the process of recouping all or a portion of the funds awarded by reducing future payments to the facility.

## **4 In Closing**

The COVID-19 public health emergency caused for the state's I/DD system that requires broad cooperation to overcome; it is also clear that the situation will continue to present challenges as it evolves. This partnership represents an opportunity to extend that cooperation to build strong resilience for the current crisis and improve health outcomes for all Rhode Islanders in need of I/DD services and supports.

The State of Rhode Island looks forward to working with critically important I/DD providers, consumers and other stakeholders to establish and carry out this partnership.



## COVID-19 Coronavirus Relief Fund Program: I/DD Provider Support Program

State of Rhode Island

December 2020

All attestations must be completed and submitted using this electronic form.

Please send questions and completed attestations to [OHHS.IDDAccessProgram@ohhs.ri.gov](mailto:OHHS.IDDAccessProgram@ohhs.ri.gov)

### Program Overview

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 designated aid for state governments to support COVID-19 efforts. Rhode Island is using a portion of that funding to create the **I/DD Provider Support Program**, a grant program to promote not only provider recovery and resiliency, but also address challenges with consumer access during the current COVID-19 pandemic. The I/DD Provider Support Program is intended to address the crisis in I/DD service continuum caused or exacerbated by the COVID-19 public health emergency. The goal of the I/DD Provider Support Program is to support residential provider response, invest in the supply and access to community programming in light of an environment where due to COVID-19, modifications in terms of service delivery and model are necessary.

The **I/DD Provider Support Program** will distribute a total of \$10 million in funding across I/DD community and residential services providers in Rhode Island based on revenue loss incurred during the COVID-19 pandemic beginning July 1, 2020. These grant funds are an additional measure to be used as secondary to other federal coronavirus relief funding received by I/DD residential and community providers, and other funding resources made available by the State over the duration of the COVID-19 response. These grants will allow providers to remain viable through the public health emergency, mitigating the impact of the current pandemic.

### Funding & Application Dates

Key dates for this program are as follows:

- **December 21, 2020:** Program guidance and attestations emailed to providers
- **December 23, 2020:** Deadline to submit questions about the application to [OHHS.IDDAccessProgram@ohhs.ri.gov](mailto:OHHS.IDDAccessProgram@ohhs.ri.gov) by 5 PM
- **December 28, 2020** Attestations due to the State at 12 PM.
- **January 8, 2021:** Funding is anticipated to be available by this date and paid via the MMIS
- **January 30, 2021:** Post award reporting is due. The state will create a reporting template for providers to account for the receipt and use of other funds intended to offset lost revenue during the public health emergency, such as HRSA dollars that will be due after the grant funds are distributed. The state will work collaboratively with providers to ensure that this requirement is supported by the state and met by each participating provider.

### Eligible Applicants

Grant funding through the I/DD Provider Support Program will be made available to all BHDDH licensed residential and community providers in the I/DD system. These programs must be in operation as of December 1, 2020. Specifically, these programs are required to be licensed by BHDDH as DDOs ("DDO Programs"). These DDO Programs provide an array of services, including residential programming as well as community based support services to eligible Medicaid beneficiaries as an alternative to the use of higher risk congregate care settings, and as a result serve to mitigate potential exposure to COVID-19.

**Instructions**

- Prior to beginning the application, you will need:
  - Provider's FEIN/Tax ID
  - Medicaid Provider ID
  - RI State Vendor Number (If applicable)
  - National Provider ID
  - Data Universal Numbering System, or "DUNS," Number
  - Bank Account Information
- Providing all requested information when submitting the application will allow us to more quickly review your request and decrease the likelihood that we will need to contact you for additional information. If you do not provide all of the requested information this may delay our ability to provide payment sooner.
- Payments will be processed by the Medicaid Management Information System (MMIS). If you are not currently enrolled as a Medicaid Fee-for-Service provider, the state will enroll you for the purpose of processing payments under the I/DD Provider Support Program. You may receive an IRS Form 1099 from the State of Rhode Island.
- Completed attestations should be submitted via this electronic form.
- Applicant may not edit an attestation after it has been submitted. In the event that an Applicant has made errors in a submitted application, Applicant must submit another complete attestation and notify OHHS.IDDAccessProgram@ohhs.ri.gov to specify which application BHDDH should review.
- Applications must be received by December 28, 2020 at 12PM.

**SECTION I - CONTACT INFORMATION**

I/DD Provider Name:	
Business Address:	
City:	
ZIP+4:	
Business Contact Name (First, Last):	
Contact Email:	
Contact Phone:	

**SECTION II - PROVIDER INFORMATION**

FEIN/Tax ID (XX-XXXXXXX):	
Provider Type:	
RI State Vendor Number:	
Medicaid Provider ID Number:	

National Provider ID:	
Data Universal Numbering System, or "DUNS," number for the entity applying:	
Name of Bank to which funds should be disbursed:	
Bank Account Number:	
Bank Account Routing Number:	
Checking or Savings Account?	
<b>SECTION III – Form W-9</b>	
<p>All Applicants must complete and submit a US Department of the Treasury Internal Revenue Service Form W-9 (Rev. October 2018). The correct version of this form and instructions to complete it can be found on the IRS.gov website. <a href="https://www.irs.gov/forms-pubs/about-form-w-9">https://www.irs.gov/forms-pubs/about-form-w-9</a>.</p> <p>Once complete, email your W-9 to <a href="mailto:OHHS.IDDAccessProgram@ohhs.ri.gov">OHHS.IDDAccessProgram@ohhs.ri.gov</a>. The subject of this email must follow this format: [Program Name]: W-9. The deadline for receiving W-9 Forms is the same deadline for applications: Monday, December 28, 2020 by 12 PM. Applications without a completed Form W-9 will not be considered.</p>	

**SECTION IV – AMOUNT OBLIGATION (AWARD)**

By submitting this attestation for the Rhode Island I/DD Provider Support Program, I acknowledge that I am in agreement with the methodology used to determine the grant award, which represents lost revenue during the public health emergency, beginning July 1, 2020. It is understood that this methodology relies on the following calculation:

$$\text{LOST REVENUE} = \text{TOTAL SERVICES AUTHORIZATIONS (\$ amount)} - \text{EXPENDITURES}$$

The final allocation of grant funding will be prorated to remain within the \$10M fund and the state will apply a formula to ensure that a prorated share of the \$10M is fairly and equitably distributed to each participating provider. Furthermore, if all eligible providers do not choose to apply, the state will redistribute their share of the \$10M award to the entire population of providers who choose to participate in the program to ensure that the full, budgeted amount is deployed.

Based on the information provided in Attachment A (Revenue Loss Data by Provider), the award granted should total: \_\_\_\_\_.

Moreover, I hereby agree to the following, for the full duration of the public health emergency:

- a. To continue to provide essential services to beneficiaries;
- b. To make reasonable attempts to not lay off over fifty (50) percent of employees;
- c. To remain in contact with beneficiaries served by the DDO to determine health and safety needs and develop alternative service delivery strategies and modalities, outreach through telephonic service and technology to facilitate, when possible, community outreach and support. The purpose of which is to maintain routine and reduce isolation and risk to participants.
- d. To comply with all public health recommendations, regarding COVID-19, as applicable.
- e. That for beneficiaries receiving supports and services through Shared Living Arrangements or through a residential program, the provider shall ensure that the beneficiary served receives sufficient and adequate funding and service levels.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (MM/DD/YY)

\_\_\_\_\_  
Name & Title

**SECTION V– NOTIFICATIONS**

1. Potential Applicants are advised to review all sections of the Application carefully and to follow instructions completely, as failure to make a complete submission as described elsewhere herein may result in disqualification of the application.
2. All costs associated with developing or submitting an application proposal shall be borne by the Applicant. The State assumes no responsibility for these costs.
3. Applicants whose applications are approved and funded may receive an IRS Form 1099 at tax year end.

4. Equal Employment Opportunity (G.L. 1956 § 28-5.1-1, et seq.) – § 28-5.1-1 Declaration of policy – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island State government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of State employment. This policy applies to all areas where State dollars are spent, in employment, public services, grants and financial assistance, and in State licensing and regulation.
5. In accordance with Title 7, Chapter 1.2 of the General Laws of Rhode Island, no foreign corporation, a corporation without a Rhode Island business address, shall have the right to transact business in the State until it shall have procured a Certificate of Authority to do so from the Rhode Island Secretary of State (401-222-3040).
6. Awarded Applicant must provide notification to EOHHS within thirty (30) days of any potential changes that may impact performance or represent material modifications to the Applicant in relation to the Application and associated approval for participation in the program (e.g. change in ownership; change in legal or financial status such as but not limited to changes due to a merger, acquisition, or any other change in legal status; change in facility “standing” with RIDOH, Medicaid or Medicare; or other material change). Upon notice and with reasonable opportunity for the Applicant to address identified deficiencies, EOHHS reserves the right to suspend or terminate facility participation in the program.

7. Awarded Applicant shall not assign or transfer any right, interest, or obligation under this program to any successor entity or other entity without the prior written consent of EOHHS. EOHHS reserves the right to decide at any time not to move forward with this program, modify, or terminate the program if it is determined that it is not achieving the established principles and goals.
8. Governing Law. The construction and effect of this Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise. Any suit, action or proceeding brought in connection with this Agreement shall be brought solely in the Providence Superior Court, Providence, Rhode Island. The Parties irrevocably submit to the exclusive jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the exclusive venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability.
9. Changes to This Agreement. Any changes to this Agreement may only be made pursuant to a written amendment signed by both Parties.
10. Suspension. EOHHS may suspend this Agreement, in whole or in part, if the Awarded Applicant fails to comply with any terms and conditions of this Agreement.
11. Public Records. All records possessed by EOHHS in connection with this Agreement are subject to the Rhode Island Access to Public Records Act ("APRA"), R.I. Gen. Laws § 38-2-1, *et seq.* In no event shall any State agency be liable to Awarded Applicant for releasing to the public any records relating to this Agreement that State Agency determines may or must be released in accordance with APRA.
12. Whistleblower Protection. An employee of an Awarded Applicant, contractor, subcontractor, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, a gross waste of Federal funds, an abuse of authority relating to a Federal award, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to this Agreement.
13. Federal Funding.
  - Awarded Applicant acknowledges and understands that the funding is subject to the requirements of the U.S. Department of Treasury. EOHHS is relying on guidance issued by U.S. Department of Treasury ("Treasury Guidance"), including future guidance that may issue after the date of this Agreement. If EOHHS, in its sole and reasonable determination, determines that any Treasury Guidance indicates that any funding awarded under this Agreement, or any use of such funding, are an impermissible use of CRF funding, EOHHS may seek further clarification from the U.S. Department of Treasury and/or will work in good faith with Subrecipient to modify this Agreement to conform this Agreement to the guidance, to the extent feasible. In the event of a disallowance arising from Applicant's malfeasance, misrepresentation, or failure to abide by the terms of this attestation or the program, EOHHS may require the Awarded Applicant to repay to EOHHS an amount of money equal to the amount provided under this Agreement that corresponds to the disallowed use.
  - Awarded Applicant agrees to comply with all federal reporting requirements that may be specified by the U.S. Department of the Treasury.



14. Prohibited Uses. Funds provided pursuant to this Award must adhere to the Treasury Guidance issued or to be issued on what constitutes a necessary expenditure under Section 5001 of the CARES Act and the terms herein. Subrecipient agrees to promptly repay any funds that were used for unauthorized purposes or inappropriate expenditures to EOHHS not later than ten (10) days after a written request from EOHHS or its designated agent if EOHHS determines that any portion of this Award was expended for purposes other than those authorized under this Agreement. If the Awarded Applicant does not repay such funds upon request, EOHHS may recoup such funds as soon as possible from any current or future payments of EOHHS to the Awarded Applicant under any program administered by EOHHS and may take any other actions that it deems necessary to recovery such funds.
15. Audit. Awarded Applicant acknowledges that this Award is subject to audit, agrees to cooperate fully with any audits, and that any funds not spent in accordance with this Agreement or Treasury Guidance are subject to recovery and recoupment.
16. Segregation of Funds. Awarded Applicant agrees that it shall segregate obligations and expenditures of this Award from other funding it receives from the State, federal and/or other sources. Awarded Applicant agrees that no part of funds made available under this Award may be commingled with any other funds or used for a purpose other than that of making payments in support of projects and activities expressly authorized in this Agreement.
17. Applicable Law and Regulations. Awarded Applicant acknowledges and agrees to be bound by all applicable State laws, regulations and requirements pertaining to the award of funds, and the applicable portions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published in Title 2, Part 200 of the Code of Federal Regulations, including 2 C.F.R. §§ 200.303 Internal controls, 200.330-332 Subrecipient Monitoring and Management.
18. Indemnification. Awarded Applicant shall indemnify, defend and hold the State of Rhode Island, its Executive Offices, agencies, branches and its officers, directors, agents or employees harmless against claims, demands, suits for judgements, losses or reasonable expenses (including attorney's fees) incurred by the State of Rhode Island, arising from the performance of this Agreement by the Awarded Applicant or its agents or employees.
19. Debarment and Suspension. By signing this Agreement, the duly authorized individual for the Awarded Applicant certifies that neither the Awarded Applicant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in Federal assistance programs and activities including subawards, in accordance with 42 CFR part 180. Awarded Applicant is required to notify EOHHS of any changes to the status certified in this section.
20. Mandatory Disclosures. Awarded Applicant must disclose, within three (3) business days, in writing to EOHHS all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. Failure to make required disclosures can result in the imposition of any of the remedies described in 42 CFR 200.338.

21. Workers' Compensation. Awarded Applicant certifies that it is in compliance with the laws relating to workers' compensation and insurance coverage. Awarded Applicant's employees and agents shall not be considered employees of the State of Rhode Island. Any claims that may arise on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State of Rhode Island's obligation or responsibility.
22. Record Retention and Access. Awarded Applicant shall maintain all financial records, supporting documents, statistical records, and other records pertinent to this Agreement for a period of five (5) years from the date of this Agreement, or for the minimum amount of time required by federal or state law governing record retention, whichever period is greater ("Retention Period").
- The U.S. Treasury and its Inspector General, the Pandemic Response Accountability Committee, any other federal agencies with jurisdiction over the subject matter of this Agreement, the Office of Internal Audit within the Rhode Island Department of Administration, and the State Auditor General shall have the right to access any documents, papers or other records of Subrecipient which may be related to this Agreement in order to make audits, examinations, excerpts and transcripts. The right also includes timely and reasonable access to Subrecipient staff for the purpose of interview and discussion related to such documents.
  - In addition to the foregoing, the following specific retention guidelines apply:
    - *Litigation*. If any litigation, claim or audit is started before the expiration of the Retention Period, the records must be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action is taken.
    - *Written Notification*. State Agency notifies Awarded Applicant of an extension of the Retention Period.
    - *Records for Real Property*. Awarded Applicant is required to retain property records for three (3) years after final disposition.
    - *Program Income Transactions after Period of Performance*. When required, the retention period for the program income records starts at the end of the Awarded Applicant's fiscal year in which the program income is earned.
23. FFATA Requirements. Awarded Applicant agrees to provide EOHHS the information required for Federal Funding Accountability and Transparency Act reporting including executive compensation information, where applicable.
- Notice of Changes. Awarded Applicant shall notify EOHHS in writing if there is a change in Awarded Applicant's legal status, Federal employer identification number (FEIN), valid unique entity identifier (DUNS number), entity name or address within thirty (30) days of any change.
24. Lobbying. Awarded Applicant shall not use funds received under this Agreement to lobby federal, state or local officials or their staff to receive additional funding, to influence legislation or regulation, or on any other matter.
25. Conflicts of Interest. Awarded Applicant must maintain written standards of conduct, including a conflict of interest policy. Awarded Applicant shall notify EOHHS of any and all conflicts of interest, as defined under the Rhode Island Ethics Code and its implementing regulations, between the Subrecipient and a State employee or a State official which Subrecipient is aware of or should be aware of.
26. Litigation, Investigations. In the event Awarded Applicant becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material relationship to this Agreement, Awarded Applicant shall notify EOHHS, in writing, within five (5) business days of when it determined, or should have determined, that such litigation, investigation or transaction may reasonably be considered to have a material relationship to this Agreement.

27. Audits & Financial Statement Review. Awarded Applicant shall be subject to the audit requirements based on the amount of Federal funds expended in the Awarded Applicant's fiscal year. Guidance on determining Federal funds expended is provided in 2 CFR 200.502.

- *Single and Program-Specific Audits.* If Awarded Applicant expends \$750,000 or more in Federal funds combined during its fiscal year, it must have a single audit or program-specific audit conducted for that year. 2 CFR 200.501(a)(b)(c), 2 CFR 200.507.
- *Financial Statement Audit.* If Awarded Applicant expends between \$300,000 and \$749,999 in Federal funds combined, Subrecipient must have a financial statement audit conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).
- *Financial Statement Review.* If, during its fiscal year, the Awarded Applicant expends less than \$300,000 in Federal funds, the Awarded Applicant must have a financial statement review completed by a licensed CPA conducted in accordance with standards established by the American Institute of Certified Public Accountants.
- *For-Profit Entities.* A for-profit entity that expends \$750,000 or more in Federal funds during its fiscal year is required to have a program-specific audit conducted in accordance with 2 CFR 200.507. A for-profit entity with expenditures less than \$750,000 shall follow the applicable standard outlined in sections (B) or (C) above.
- For those organizations required to submit an independent audit report, the audit is to be conducted by a Certified Public Accountant or Certified Public Accounting Firm licensed with the State of Rhode Island. All audits shall be prepared following the Generally Accepted Auditing Standards. Awarded Applicant shall request and maintain a copy of the auditor's most recent audit opinion or peer review report and acceptance letter. Subrecipient shall follow procedures prescribed by EOHHS for the preparation and submission of audit reports and any related documents.

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Signature

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Date (MM/DD/YY)

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Name & Title

**SECTION VI – ACKNOWLEDGEMENT**

By submitting this attestation for the Rhode Island I/DD Provider Support Program, I acknowledge that I am authorized to submit this request on behalf of the program and that all the information provided is accurate to the best of my knowledge and ability. I acknowledge the State of Rhode Island is relying upon the information as submitted in order to determine whether to issue a grant. Therefore, if I become aware of any inaccuracies in the information provided, I will immediately notify the State of Rhode Island through email at OHHS.IDDAccessProgram@ohhs.ri.gov.

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Signature

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Date (MM/DD/YY)

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Name & Title

**Attachment A: Revenue Loss Data by Provider**

**Here I will insert a condensed version of the award data so providers have it as a reference once we agree on this approach.**



UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA  
*Plaintiff,*

v.

C.A. No. 1:13-cv-00442-JJM-PAS

STATE OF RHODE ISLAND  
*Defendant.*

**PROPOSED ORDER**

The State of Rhode Island, having followed the directive of this Court on November 24, 2020 to work collaboratively with the Providers under the direction of the Court Monitor to the Consent Decree, Dr. A. Anthony Antosh, to reach agreement for additional funding to be provided to the provider network to address an immediate crisis brought on by the COVID-19 pandemic. Having reviewed and accepted the methodology outlined in the I/DD Provider Support Program, it is hereby,

**ORDERED, ADJUDGED, AND DECREED**

1. As a result of the COVID-19 crisis, the State and Providers agree that the State will provide an additional \$10 million in funding to Providers, pursuant to the I/DD Provider Support Program;
2. The I/DD Provider Support Program shall be administered in accord with the framework presented by the State of Rhode Island, more specifically detailed in Exhibit B to the State's motion;
3. The State agrees to work with Providers to develop a three-year plan to improve outcomes for individuals with I/DD, and to include an investment in the I/DD provider network in the Governor's FY22 state budget plan as part of this work.

IT IS SO ORDERED

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John J. McConnell, Jr.  
United States District Judge

Defendant,  
By their Attorneys,

/s/ Marc DeSisto

/s/ Kathleen A. Hilton

Marc DeSisto, Esq. (#2757)

Kathleen A. Hilton, Esq. (#9473)

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CERTIFICATE OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 21<sup>st</sup> day of December 2020 and is available for viewing and downloading from the ECF system.

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/s/ Marc DeSisto