§ 367-w. Health care and mental hygiene worker bonuses. 1. Purpose and intent. New York's essential front line health care and mental hygiene workers have seen us through a once-in-a-century public health crisis and turned our state into a model for battling and beating COVID-19. To attract talented people into the profession at a time of such significant strain while also retaining those who have been working so tirelessly these past two years, we must recognize the efforts of our health care and mental hygiene workforce and reward them financially for their service.

To do that, the commissioner of health is hereby directed to seek federal approvals as applicable, and, subject to federal financial participation, to support with federal and state funding bonuses to be made available during the state fiscal year of 2023 to recruit, retain, and reward health care and mental hygiene workers.

2. Definitions. As used in this section, the term:

(a) "Employee" means certain front line health care and mental hygiene practitioners, technicians, assistants and aides that provide hands on health or care services to individuals, without regard to whether the person works full-time, part-time, on a salaried, hourly, or temporary basis, or as an independent contractor, that received an annualized base salary of one hundred twenty-five thousand dollars or less, to include:

(i) Physician assistants, dental hygienists, dental assistants, psychiatric aides, pharmacists, pharmacy technicians, physical therapists, physical therapy assistants, physical therapy aides, occupational therapists, occupational therapy assistants, occupational therapy aides, speech-language pathologists, respiratory therapists, exercise physiologists, recreational therapists, all other therapists, orthotists, prosthetists, clinical laboratory technologists and technicians, diagnostic medical sonographers, nuclear medicine technologists, radiologic technologists, magnetic resonance imaging technologists, ophthalmic medical technicians, radiation therapists, dietetic technicians, cardiovascular technologists and technicians, certified first responders, emergency medical technicians, advanced emergency medical technicians, paramedics, surgical technologists, all other health technologists and technicians, orderlies, medical

assistants, phlebotomists, all other health care support workers, nurse anesthetists, nurse midwives, nurse practitioners, registered nurses, nursing assistants, and licensed practical and licensed vocational nurses;

(ii) to the extent not already included in subparagraph (i) of this paragraph, staff who perform functions as described in the consolidated fiscal report (CFR) manual with respect to the following title codes:

Mental Hygiene Worker;

Residence/Site Worker;

Counselor (OMH);

Manager (OMH);

Senior Counselor (OMH);

Supervisor (OMH);

Developmental Disabilities Specialist QIDP - Direct Care (OPWDD);

Certified Recovery Peer Advocate;

Peer Professional - Non-CRPA (OASAS Only);

Job Coach/Employment Specialist (OMH and OPWDD);

Peer Specialist (OMH);

Counselor - Alcoholism and Substance Abuse (CASAC);

Counseling Aide/Assistant - Alcoholism and Substance Abuse;

Other Direct Care Staff;

Case Manager;

Counselor - Rehabilitation;

Developmental Disabilities Specialist/Habilitation Specialist QIDP - Clinical (OPWDD);

Emergency Medical Technician;

Intensive Case Manager (OMH);

Intensive Case Manager/Coordinator (OMH);

Nurse - Licensed Practical;

Nurse - Registered;

Psychologist (Licensed);

Psychologist (Master's Level)/Behavioral Specialist;

Psychology Worker/Other Behavioral Worker;

Social Worker - Licensed (LMSW, LCSW);

Social Worker - Master's Level (MSW);

Licensed Mental Health Counselor (OASAS, OMH, OCFS);

Licensed Psychoanalyst (OMH);

Therapist - Recreation;

Therapist - Activity/Creative Arts;

Therapist - Occupational;

Dietician/Nutritionist;

Therapy Assistant/Activity Assistant;

Nurse's Aide/Medical Aide;

Behavior Intervention Specialist 1 (OPWDD);

Behavior Intervention Specialist 2 (OPWDD);

Clinical Coordinator;

Intake/Screening;

Pharmacist;

Marriage and Family Counselor/Therapist;

Residential Treatment Facility (RTF) Transition Coordinator (OMH);

Crisis Prevention Specialist (OMH);

Early Recognition Specialist (OMH);

Other Clinical Staff/Assistants;

Nurse Practitioner/Nursing Supervisor;

Therapist - Physical;

Therapist - Speech;

Program or Site Director; and

Assistant Program or Assistant Site Director; and

(iii) such titles as determined by the commissioner, or relevant agency commissioner as applicable, and approved by the director of the budget.

(b) "Employer" means a provider enrolled in the medical assistance program under this title that employs at least one employee and that bills for services under the state plan or a home and community based services waiver authorized pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act, or that has a provider agreement to bill for services provided or arranged through a managed care provider under section three hundred sixty-four-j of this title or a managed long term care plan under section forty-four hundred three-f of the public health law, to include:

(i) providers and facilities licensed, certified or otherwise authorized under articles twenty-eight, thirty, thirty-six or forty of the public health law, articles sixteen, thirty-one, thirty-two or thirty-six of the mental hygiene law, article seven of this chapter, fiscal intermediaries under section three hundred sixty-five-f of this title, pharmacies registered under section six thousand eight hundred eight of the education law, or school based health centers;

(ii) programs that participate in the medical assistance program and are funded by the office of mental health, the office of addiction services and supports, or the office for people with developmental disabilities; and

(iii) other provider types determined by the commissioner and approved by the director of the budget;

(iv) provided, however, that unless the provider is subject to a certificate of need process as a condition of state licensure or approval, such provider shall not be an employer under this section unless at least twenty percent of the provider's patients or persons served are eligible for services under this title and title XIX of the federal social security act.

(c) Notwithstanding the definition of employer in paragraph (b) of this subdivision, and without regard to the availability of federal financial participation, "employer" shall also include an institution of higher education, a public or nonpublic school, a charter school, an approved preschool program for students with disabilities, a school district or boards of cooperative educational services, programs funded by the office of mental health, programs funded by the office of addiction services and supports, programs funded by the office for people with developmental disabilities, programs funded by the office

for the aging, a health district as defined in section two of the public health law, or a municipal corporation, where such program or entity employs at least one employee. Such employers shall be required to enroll in the system designated by the commissioner, or relevant agency commissioners, in consultation with the director of the budget, for the purpose of claiming bonus payments under this section. Such system or process for claiming bonus payments may be different from the system and process used under subdivision three of this section.

(d) "Vesting period" shall mean a series of six-month periods between the dates of October first, two thousand twenty-one and March thirty-first, two thousand twenty-four for which employees that are continuously employed by an employer during such six-month periods, in accordance with a schedule issued by the commissioner or relevant agency commissioner as applicable, may become eligible for a bonus pursuant to subdivision four of this section.

(e) "Base salary" shall mean, for the purposes of this section, the employee's gross wages with the employer during the vesting period, excluding any bonuses or overtime pay.

(f) "Municipal corporation" means a county outside the city of New York, a city, including the city of New York, a town, a village, or a school district.

3. Tracking and submission of claims for bonuses. (a) The commissioner, in consultation with the commissioner of labor and the Medicaid inspector general, and subject to any necessary approvals by the federal centers for Medicare and Medicaid services, shall develop such forms and procedures as may be needed to identify the number of hours employees worked and to provide reimbursement to employers for the purposes of funding employee bonuses in accordance with hours worked during the vesting period.

(b) Using the forms and processes developed by the commissioner under this subdivision, employers shall, for a period of time specified by the commissioner:

(i) track the number of hours that employees work during the vesting period and, as applicable, the number of patients served by the employer who are eligible for services under this title; and

(ii) submit claims for reimbursement of employee bonus payments. In

filling out the information required to submit such claims, employers shall use information obtained from tracking required pursuant to paragraph (a) of this subdivision and provide such other information as may be prescribed by the commissioner. In determining an employee's annualized base salary, the employer shall use information based on payroll records.

(c) Employers shall be responsible for determining whether an employee is eligible under this section and shall maintain and make available upon request all records, data and information the employer relied upon in making the determination that an employee was eligible, in accordance with paragraph (d) of this subdivision.

(d) Employers shall maintain contemporaneous records for all tracking and claims related information and documents required to substantiate claims submitted under this section for a period of no less than six years. Employers shall furnish such records and information, upon request, to the commissioner, the Medicaid inspector general, the commissioner of labor, the secretary of the United States Department of Health and Human Services, and the deputy attorney general for Medicaid fraud control.

4. Payment of worker bonuses. (a) Upon issuance of a vesting schedule by the commissioner, or relevant agency commissioner as applicable, employers shall be required to pay bonuses to employees pursuant to such schedule based on the number of hours worked during the vesting period. The schedule shall provide for total payments not to exceed three thousand dollars per employee in accordance with the following:

(i) employees who have worked an average of at least twenty but less than thirty hours per week over the course of a vesting period would receive a five hundred dollar bonus for the vesting period;

(ii) employees who have worked an average of at least thirty but less than thirty-five hours per week over the course of a vesting period would receive a one thousand dollar bonus for such vesting period;

(iii) employees who have worked an average of at least thirty-five hours per week over the course of a vesting period would receive a one thousand five hundred dollar bonus for such vesting period.

(iv) full-time employees who are exempt from overtime compensation as established in the labor commissioner's minimum wage orders or otherwise

provided by New York state law or regulation over the course of a vesting period would receive a one thousand five hundred dollar bonus for such vesting period.

(b) Notwithstanding paragraph (a) of this subdivision, the commissioner may through regulation specify an alternative number of vesting periods, provided that total payments do not exceed three thousand dollars per employee.

(c) Employees shall be eligible for bonuses for no more than two vesting periods per employer, in an amount equal to but not greater than three thousand dollars per employee across all employers.

(d) Upon completion of a vesting period with an employer, an employee shall be entitled to receive the bonus and the employer shall be required to pay the bonus no later than the date specified under this subdivision, provided however that prior to such date the employee does not terminate, through action or inaction, the employment relationship with the employer, in accordance with any employment agreement, including a collectively bargained agreement, if any, between the employee and employer.

(e) Any bonus due and payable to an employee under this section shall be made by the employer no later than thirty days after the bonus is paid to the employer.

(f) an employer shall be required to submit a claim for a bonus to the department no later than thirty days after an employee's eligibility for a bonus vests, in accordance with and upon issuance of the schedule issued by the commissioner or relevant agency commissioner.

(g) No portion of any dollars received from claims under subparagraph (ii) of paragraph (b) of subdivision three of this section for employee bonuses shall be returned to any person other than the employee to whom the bonus is due or used to reduce the total compensation an employer is obligated to pay to an employee under section thirty-six hundred fourteen-c of the public health law, section six hundred fifty-two of the labor law, or any other provisions of law or regulations, or pursuant to any collectively bargained agreement.

(h) No portion of any bonus available pursuant to this subdivision shall be payable to a person who has been suspended or excluded under the medical assistance program during the vesting period and at the time an employer submits a claim under this section.

(i) The use of any accruals or other leave, including but not limited to sick, vacation, or time used under the family medical leave act, shall be credited towards and included in the calculation of the average number of hours worked per week over the course of the vesting period.

5. Audits, investigations and reviews. (a) The Medicaid inspector general shall, in coordination with the commissioner, conduct audits, investigations and reviews of employers required to submit claims under this section. Such claims, inappropriately paid, under this section shall constitute overpayments as that term is defined under the regulations governing the medical assistance program. The Medicaid inspector general may recover such overpayments to employers as it would an overpayment under the medical assistance program, impose sanctions up to and including exclusion from the medical assistance program, impose penalties, and take any other action authorized by law where:

(i) an employer claims a bonus not due to an employee or a bonus amount in excess of the correct bonus amount due to an employee;

(ii) an employer claims, receives and fails to pay any part of the bonus due to a designated employee;

(iii) an employer fails to claim a bonus due to an employee.

(b) Any employer identified in paragraph (a) of this subdivision who fails to identify, claim and pay any bonus for more than ten percent of its employees eligible for the bonus shall also be subject to additional penalties under subdivision four of section one hundred forty-five-b of this article.

(c) Any employer who fails to pay any part of the bonus payment to a designated employee shall remain liable to pay such bonus to that employee, regardless of any recovery, sanction or penalty the Medicaid inspector general may impose.

(d) In all instances recovery of inappropriate bonus payments shall be recovered from the employer. The employer shall not have the right to recover any inappropriately paid bonus from the employee.

(e) Where the Medicaid inspector general sanctions an employer for violations under this section, they may also sanction any affiliates as defined under the regulations governing the medical assistance program.

6. Rules and regulations. The commissioner, in consultation with the

Medicaid inspector general as it relates to subdivision five of this section, may promulgate rules, to implement this section pursuant to emergency regulation; provided, however, that this provision shall not be construed as requiring the commissioner to issue regulations to implement this section.