

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Administrative Procedures – Tribal Consultation Process.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which only the Department of Health and Hospitals staff were present. No oral testimony was given, nor written correspondence received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

REG/WJR/CEC

Attachments (3)

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Administrative Procedures
Tribal Consultation Process
(LAC 50:I.105)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:I.105 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Federal regulations at §1902(a)(73) of the Social Security Act (the Act) requires states in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service (HIS), tribes or tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA) or Urban Indian Organizations under the Indian Health Care Improvement Act (IHCIA). Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program (CHIP). Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian Organizations.

In compliance with the provisions of §§1902(a)(73) and 2107(e)(I), the Department of Health and Hospitals, Bureau of Health Services Financing submitted the required Medicaid State Plan Amendment (SPA) under transmittal number (TN) 12-13 in June 2012 and secured federal approval of the Medicaid Program's tribal consultation process from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The tribal consultation process must be completed for all Medicaid State Plan, waiver, and CHIP submissions to CMS.

CMS has now determined that LA SPA TN 12-13 needs to be amended in order to clarify the regulations governing the provisions relative to waiver submissions, and has directed the department to submit a corresponding SPA to make the necessary revisions. In compliance with CMS' directive, the department proposes to adopt provisions governing the tribal consultation process in the Medicaid Program and to promulgate these provisions in a codified format for inclusion in the *Louisiana Administrative Code*. This proposed rule will also satisfy the technical requirements for federal public notice for submission of the corresponding SPA.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 1. General Provisions

Chapter 1. Administrative Procedures

§105. Tribal Consultation Process

A. Pursuant to §1902(a)(73) and §2107(e)(I) of the Social Security Act, the Medicaid Program hereby establishes a process to seek advice on a regular, ongoing basis from designees of the state's federally-recognized Indian tribal organizations and Indian health programs about Medicaid and Children's Health Insurance Program matters that may have a direct impact on Indian health programs and tribal organizations.

B. The department shall comply with the technical requirements for providing verification of the tribal consultation process to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) when changes to the Medicaid Program are submitted through:

1. State Plan amendments;
2. waivers, including:
 - a. newly proposed submissions;
 - b. amendments;
 - c. extensions;
 - c. renewals; and
 - d. waiver terminations.

C. In accordance with the approved Medicaid State Plan governing the tribal consultation process, the Medicaid Program will periodically provide a summary, which includes the changes being made by the Medicaid Program, to the federally-recognized Louisiana tribal organizations to initiate the tribal consultation process.

1. Tribal organizations will have 30 days to respond with any comments, unless the date for submission of the changes to CMS becomes critical and needs to be expedited. Expedited submissions will have a 7-day comment period. This notification and comment period applies to all State Plan and waiver submissions.

2. If comments are received, they will be forwarded to the State Medicaid Director, or his/her designee, for further consideration. If no comments are received within the 30- or 7-day time frame, the Medicaid Program will make the assumption the tribes agree with the provisions in the proposed State Plan and waiver documents and proceed accordingly.

D. The tribal comment period must expire prior to the submission of State Plan and waiver documents to CMS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed

Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit

data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION

April 28, 2016

9:30 a.m.

RE: Administrative Procedures
Tribal Consultation Process
Docket # 04282016-1
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic – Administrative Procedures – Tribal Consultation Process

Date – April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Zekeidra P. Knight	628 N. 4 th St Baton Rouge, LA 70802	225.342.6943	DHH / BHSF
2. Cornette Scott	State of Louisiana Dept. of Health & Hospitals 628 N. 4 th Street Baton Rouge LA 70802	325-342-3881	Medicaid Policy & Compliance
3.			
4.			
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6.			



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers – Children’s Choice Waiver – Unit of Reimbursement.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which the Department of Health and Hospitals staff were present. Also present was James Warren with Hometown Senior Care. No oral testimony was given. However, written comments were received from the Amitai Heller of the Advocacy Center regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. summary of all written comments received by the agency; and
5. the agency’s response to comments from Amitai Heller.

REG/WJR/CEC

Attachments (5)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice Waiver
Unit of Reimbursement
(LAC 50:XXI.12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.12101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Children's Choice Waiver in order to adopt requirements mandating that providers utilize the electronic verification system designated by the department for automated scheduling, time and attendance tracking and billing for certain home and community-based services (*Louisiana Register*, Volume 41, Number 7).

Act 299 of the 2011 Regular Session of the Louisiana Legislature directed the department to implement certain policy and licensing

provisions governing home and community-based services (HCBS) and mandated cost reporting for HCBS providers. In compliance with Act 299, the department has determined that it is necessary to amend the provisions governing the Children's Choice Waiver in order to further clarify the reimbursement methodology, remove language that provides historical information pertaining to the rate reimbursement and revise the terminology associated with Children's Choice Waiver reimbursements.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice

Chapter 121. Reimbursement

§12101. Unit of Reimbursement

A. ...

B. Direct service providers shall be reimbursed according to the following unit of reimbursement approach. Actual rates will be published in the Children's Choice Waiver provider manual, and will be subsequently amended by direct notification to the affected providers. For services provided by a subcontractor agency, the enrolled direct service provider shall coordinate and reimburse the subcontractor according to the terms of the contract and retain the administrative costs.

1. Family support, crisis support, center-based respite,

aquatic therapy, art therapy, music therapy, sensory integration and hippotherapy/therapeutic horseback riding services shall be reimbursed at a flat rate per 15-minute unit of service and reimbursement shall not be made for less than 15-minute (one quarter-hour) of service. This covers both service provision and administrative costs.

a. Up to two participants may choose to share family support services if they share a common provider of this service.

b. Up to two participants may choose to share crisis support services if they share a common provider of this service.

c. There is a separate reimbursement rate when these services are shared.

2. - 3. ...

4. Direct Support Professionals Wages

a. The minimum hourly rate paid to providers for full-time equivalent (FTE) direct support professionals shall be the federal minimum wage in effect at the time.

B.4.b. - D.1.c. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007),

amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:2504 (September 2013), LR 40:68 (January 2014), LR 41:128 (January 2015), LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Home and Community-Based Services
Children's Choice Waiver
Unit of Reimbursement
Docket # 04282016-2
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark".

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Home and Community-Based Services; Waivers; Children's Choice Waiver-Unit of Reimbursement

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. <i>Kurt Kennedy</i>	<i>B28 N 4th St. BR</i>	<i>225-342-4464</i>	<i>DHA - OOD</i>
2. <i>James Warren</i>	<i>9121 Interline Ave Ste 10A</i>	<i>225-218-4389</i>	<i>Home + own Senior Care</i>
3. <i>Brenden Shea</i>	<i>628 N 4th BR</i>	<i>342-8853</i>	<i>DHH - OOD</i>
4. <i>Cornette Scott</i>	<i>State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802</i>	<i>225-342-3881</i>	<i>Medicaid Policy & Compliance</i>
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services – Children’s Choice Waiver – Unit of Reimbursement
Public Hearing Date: April 28, 2016
Docket No. : 04282016-2
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Notice of Intent)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: <ol style="list-style-type: none"> 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

RE: Notices of Intent for Units of Reimbursement and Rate Methodology for Home and Community-Based Services Waivers

This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: "The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate." The Department shares your concerns

and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers - Community Choices Waiver - Unit of Reimbursement.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which James Warren of Hometown Senior Care and Department of Health and Hospitals staff were present. No oral testimony was given. Written correspondence was received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. summary of all written comments received by the agency; and
5. the agency's response to comments from Amitai Heller.

REG/WJR/RKA

Attachments (5)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

Home and Community-Based Services Waivers
Community Choices Waiver
Unit of Reimbursement
(LAC 50:XXI.9501)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.9501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the Community Choices Waiver in order to clarify the provisions governing monitored in-home caregiving services, and to revise the provisions governing the organized health care delivery system (*Louisiana Register*, Volume 41, Number 12).

Act 299 of the 2011 Regular Session of the Louisiana Legislature directed the department to implement certain policy and licensing provisions governing home and community-based services (HCBS) and mandated cost reporting for HCBS providers. In compliance with Act 299, the department has determined that it is necessary to amend the provisions governing the Community

Choices Waiver in order to further clarify the reimbursement methodology, remove language that provides historical information pertaining to the rate reimbursement and revise the terminology associated with Community Choices Waiver reimbursements.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 7. Community Choices Waiver

Chapter 95. Reimbursement

§9501. Unit of Reimbursement

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for the following services, and reimbursement shall not be made for less than one quarter hour (15 minutes) of service:

1. personal assistance services (except for the "a.m. and p.m." service delivery model);

a. up to three participants may share personal assistance services if they live together and share a common provider of these services; and

b. there is a separate reimbursement rate for shared personal care services.

c. Repealed.

A.2.-B.3. ...

4. transition expenses (not to exceed the maximum lifetime limit set by OAAS); and

B.5. - E. ...

F. The following services shall be reimbursed on a per-visit basis:

1. certain nursing and skilled maintenance therapy procedures; and

2. personal assistance services furnished via "a.m. and p.m." delivery method.

G. The following services shall be reimbursed on a per-visit basis:

1. certain environmental accessibility adaptations; and

2. certain nursing, and skilled maintenance therapy procedures.

H. ...

I. - L.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:322 (February 2013), LR 39:508 (March 2013), repromulgated LR 39:1048 (April 2013), amended LR 39:1779 (July 2013), LR 40:793 (April 2014), LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen

Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Home and Community-Based Services
Community Choices Waiver
Unit of Reimbursement
Docket # 04282016-3
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark".

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16
Date

DHH/BHSF PUBLIC HEARING

**Topic – Home and Community-Based Services; Waivers;
Community Choices; Waiver-Unit of Reimbursement**

Date – April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Melanie Richard	628 N. 4th St. Baton Rouge	(225) 342-8487	
2. James Warnen	9121 Entaline Ave Ste 10A	225-218-4389	Hometown Senior Care
3. Cornette Scott	State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	Dept. of Health & Hospitals Medicaid Policy & Compliance
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services – Community Choices Waiver – Unit of Reimbursement
Public Hearing Date: April 28, 2016
Docket No. : 04282016-3
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Notice of Intent)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

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This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: "The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate." The Department shares your concerns

Amitai Heller Response
May 5, 2016
Page 2

and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers – New Opportunities Waiver – Unit of Reimbursement.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which the Department of Health and Hospitals staff were present. Also present was James Warren with Hometown Senior Care. No oral testimony was given. However, written comments were received from the Amitai Heller of the Advocacy Center regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. summary of all written comments received by the agency; and
5. the agency's response to comments from Amitai Heller.

REG/WJR/CEC

Attachments (5)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Unit of Reimbursement
(LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the New Opportunities Waiver (NOW) in order to adopt requirements mandating that providers utilize the electronic verification system designated by the department for automated scheduling, time and attendance tracking and billing for certain home and community-based services (*Louisiana Register*, Volume 41, Number 7).

Act 299 of the 2011 Louisiana Legislative Session directed the department to implement certain policy and licensing

provisions governing home and community-based services (HCBS) and mandated cost reporting for HCBS providers. In compliance with Act 299, the department has determined that it is necessary to amend the provisions governing the NOW in order to further clarify the reimbursement methodology, remove language that provides historical information pertaining to the rate reimbursement and revise the terminology associated with New Opportunities Waiver reimbursements.

Title 50

**PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 11. New Opportunities Waiver**

Chapter 143. Reimbursement

§14301. Reimbursement Methodology

Chapter 143. Reimbursement

§14301. Unit of Reimbursement

A. Reimbursement for services shall be a prospective flat rate for each approved unit of service provided to the participant. One quarter hour (15 minutes) is the standard unit of service and reimbursement shall not be made for less than 15 minutes (one quarter hour) of service. This covers both service provision and administrative costs for the following services:

1. ...
2. community integration development:
 - a. up to three participants may choose to share

community integration development if they share a common provider of this service;

b. there is a separate reimbursement rate for community integration development when these services are shared;

3. - 4. ...

5. individualized and family support-day and night:

a. up to three participants may choose to share individualized and family support services if they share a common provider;

b. there is a separate reimbursement rate for individualized and family support when these services are shared;

6. ...

7. skilled nursing services:

a. up to three participants may choose to share skilled nursing services if they share a common provider;

b. there is a separate reimbursement rate for skilled nursing services when these services are shared;

c. ...

d. - e. Repealed.

A.8. - E. ...

F. Remote assistance is paid through an hourly rate.

1. - 10.d. Repealed

G. Direct Support Professionals Wages. The rate paid to direct support professionals shall be the federal minimum wage in effect at the time.

G.1. - L. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), amended LR 36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April 2013), LR 40:80 (January 2014), LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on

the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118,

Bienville Building, 628 North Fourth Street, Baton Rouge, LA.

At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Home and Community-Based Services
New Opportunities Waiver
Unit of Reimbursement
Docket # 04282016-4
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark".

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Home and Community-Based Services Waivers New Opportunity Waiver - Unit of Reimbursement

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. <i>Kristiane dy</i>	628 N. 4th St BR	225-342- 4464	DHA OCDD
2. James Warren	9121 Interline Ave Ste 10A	225-218-4389	Home town Senior Care
3. <i>Cornette Scott</i>	State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	Medicaid Policy & Compliance
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services – New Opportunities Waiver – Unit of Reimbursement
Public Hearing Date: April 28, 2016
Docket No. : 04282016-4
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Notice of Intent)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: <ol style="list-style-type: none"> 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

RE: Notices of Intent for Units of Reimbursement and Rate Methodology for Home and Community-Based Services Waivers

This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: "The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate." The Department shares your concerns

Amitai Heller Response
May 5, 2016
Page 2

and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers - Rate Methodology.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which James Warren of Hometown Senior Care and Department of Health and Hospitals staff were present. No oral testimony was given. Written correspondence was received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. summary of all written comments received by the agency;
5. the agency's response to comments from Amitai Heller; and
6. the agency's response to comments from Matthew Rovira.

REG/WJR/RKA

Attachments (6)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

Home and Community-Based Services Waivers
Rate Methodology
(LAC 50:XXI.Chapter 7)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.701 and adopt §703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 299 of the 2011 Regular Session of the Louisiana Legislature directed the department to implement certain policy and licensing provisions governing home and community-based services (HCBS) and mandated cost reporting for HCBS providers. In compliance with Act 299, the department adopted provisions establishing cost reporting requirements for providers of home and community-based waiver services (*Louisiana Register*, Volume 39, Number 3). To ensure compliance with these requirements, the department now proposes to amend the provisions governing the home and community-based services waivers in order to further clarify the reimbursement methodology.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 1. General Provisions

Chapter 7. Reimbursement Methodology

§701. Cost Reporting Requirements

A. Effective July 1, 2012, the department shall implement mandatory cost reporting requirements for providers of home and community-based waiver services who provide personal care services (including personal care services, personal care attendant services, community living supports services, attendant care services, personal assistance services, in-home respite, and individual and family support services). The cost reports will be used to verify expenditures and to support rate setting for the services rendered to waiver recipients.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:509 (March 2013), amended LR 42:

§703. Rate Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service that is provided to the recipient:

1. personal care services;
2. personal care attendant services;
3. community living supports services;
4. attendant care services;
5. personal assistance services;
6. in-home respite; and
7. individual and family support services,

collectively referred to as reimbursable assistance services.

B. One quarter hour (15 minutes) shall be the standard unit of service. Reimbursement shall not be paid for the provision of less than one quarter hour (15 minutes) of service.

C. Effective July 1, 2016, a rate validation process will occur to determine the sufficiency of reimbursement rates. This process will be repeated at a minimum of every two years thereafter. The rate validation process will involve the comparison of current provider reimbursement rates to reimbursement rates established using the department's reimbursement methodology.

1. The department's reimbursement methodology will establish an estimated reimbursement rate through the summation of the following two rate component totals:

- a. adjusted staff cost rate component; and
- b. other operational cost rate component.

2. The adjusted staff cost rate component will be determined in the following manner:

a. Direct service worker wage expense, contract labor expense, and hours worked for reimbursable assistance services will be collected from provider cost reports.

i. Collected wage and contract labor expense will be divided by collected hours worked, on an individual cost report basis, to determine a per hour labor rate for direct service workers.

ii. The individual cost report hourly labor rates will be aggregated for all applicable filed cost reports, outliers will be removed, and a simple average statewide labor rate will be determined.

b. A blended direct service worker labor rate will be calculated by comparing the simple average statewide labor rate to the most recently available, as of the calculation of the department's rate validation process, average personal care aide wage rate from the *Louisiana Occupational Employment and Wages* report for all Louisiana parishes published by the Louisiana Workforce Commission (or its successor).

i. If the simple average statewide labor rate is less than the wage rate from the *Louisiana Occupational*

Employment and Wages report, a blended wage rate will be calculated using 50 percent of both wage rates.

ii. If the simple average statewide labor rate is equal to or greater than the wage rate from the *Louisiana Occupational Employment and Wages* report, the simple average statewide labor rate will be utilized.

c. An employee benefit factor will be added to the blended direct service worker wage rate to determine the unadjusted hourly staff cost.

i. Employee benefit expense allocated to reimbursable assistance services will be collected from provider cost reports.

ii. Employee benefit expense, on an individual cost report basis, will be divided by the cost report direct service wage and contract labor expense for reimbursable assistance services to calculate employee benefits as a percentage of labor costs.

iii. The individual cost report employee benefit percentages will be aggregated for all applicable filed cost reports, outliers will be removed, and a simple average statewide employee benefit percentage will be determined.

iv. The simple average statewide employee benefit percentage will be multiplied by the blended direct

service worker labor rate to calculate the employee benefit factor.

d. The department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider cost reports is considered appropriate.

e. The unadjusted hourly staff cost will be multiplied by a productive hours adjustment to calculate the hourly adjusted staff cost rate component total. The productive hours' adjustment allows the reimbursement rate to reflect the cost associated with direct service worker time spent performing required non-billable activities. The productive hours' adjustment will be calculated as follows:

i. The department will determine estimates for the amount of time a direct service worker spends performing required non-billable activities during an Eight hour period. Examples of non-billable time include, but are not limited to: meetings, substitute staff, training, wait-time, supervising, etc.

ii. The total time associated with direct service worker non-billable activities will be subtracted from 8 hours to determine direct service worker total billable time.

iii. Eight hours will be divided by the direct service worker total billable time to calculate the productive hours adjustment.

3. The other operational cost rate component will be calculated in the following manner:

a. Capital expense, transportation expense, other direct non-labor expense, and other overhead expense allocated to reimbursable assistance services will be collected from provider cost reports.

b. Capital expense, transportation expense, supplies and other direct non-labor expense, and other overhead expense, on an individual cost report basis, will be divided by the cost report direct service wage and contract labor expense for reimbursable assistance services to calculate other operational costs as a percentage of labor costs.

c. The individual cost report other operational cost percentages will be aggregated for all applicable filed cost reports, outliers will be removed, and a simple average statewide other operational cost percentage will be determined.

d. The simple average other operational cost percentage will be multiplied by the blended direct service worker labor rate to calculate the other operational cost rate component.

4. The calculated department reimbursement rates will be adjusted to a one quarter hour unit of service by dividing the hourly adjusted staff cost rate component and the hourly other operational cost rate component totals by four.

5. The department will be solely responsible for determining the sufficiency of the current reimbursement rates during the rate validation process. Any reimbursement rate change deemed necessary due to rate validation process will be subject to legislative budgetary appropriation restrictions prior to implementation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning,

stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA.

At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Home and Community-Based Services Waivers
Rate Methodology
Docket # 04282016-5
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark".

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Home and Community-Based Services Waivers Rate Methodology

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Kirsten Clebent	628 N. 4th St. BR, La	225-219- 1149	DHH/OAAS
2. Kim Kennedy	628 N. 4th St. BR	225-342 4464	DHH / OCDD
3. James Warren	9121 Interline Ave Ste 10A	225-218-4389	Home town Senior Care
4. Cornette Scott	State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3884	Medicaid Policy & Compliance
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services – Rate Methodology
Public Hearing Date: April 28, 2016
Docket No. : 04282016-5
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Notice of Intent)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: <ol style="list-style-type: none"> 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.
Matthew Rovira, CEO Leading Health Care	Medicaid Policy Email Account	Concerned that the rate methodology does not include a profit margin like similar rate settings used for institutional providers.

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

RE: Notices of Intent for Units of Reimbursement and Rate Methodology for Home and Community-Based Services Waivers

This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: “The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate.” The Department shares your concerns

Amitai Heller Response
May 5, 2016
Page 2

and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Matthew Rovira
Chief Executive Officer
Leading Health Care of Louisiana
114 W. Vermilion
Lafayette, LA 70501

Dear Mr. Rovira:

**RE: Notice of Intent for Home and Community-Based Services Waivers
Rate Methodology**

This letter is in response to your correspondence regarding the Notice of Intent for Home and Community-Based Services (HCBS) Waiver – Rate Methodology which was published in the March 20, 2016 issue of the *Louisiana Register*. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

The Department is aware that this rule may have an impact on certain providers and is monitoring provisions so that it can respond to any issues that arise, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of cost reports of HCBS providers.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Matthew Rovira Response
May 5, 2016
Page 2

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jen Steele", with a horizontal line underneath the name.

Jen Steele
Interim Medicaid Director

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers - Residential Options Waiver - Unit of Reimbursement.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which James Warren of Hometown Senior Care and Department of Health and Hospitals staff were present. No oral testimony was given. Written correspondence was received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. summary of all written comments received by the agency; and
5. the agency's response to comments from Amitai Heller.

REG/WJR/RKA

Attachments (5)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Residential Options Waiver
Unit of Reimbursement
(LAC 50:XXI.16901 and 16903)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.16901 and §16903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Residential Options Waiver (ROW) to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW (*Louisiana Register*, Volume 42, Number 1).

Act 299 of the 2011 Regular Session of the Louisiana Legislature directed the department to implement certain policy and licensing provisions governing home and community-based services (HCBS) and mandated cost reporting for HCBS providers. In compliance with Act 299, the department has determined that it is necessary to amend the provisions governing the ROW to further clarify the reimbursement methodology, remove language that provides historical information pertaining to the rate reimbursement and revise the terminology associated with ROW reimbursements.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 169. Reimbursement

§16901. Unit of Reimbursement

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service and reimbursement shall not be made for less than one quarter hour of service. This covers both the service provision and administrative costs for these services:

A.1. - J. ...

K. - L.1.d. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:1049 (April 2013), LR 41:2168, 2169 (October 2015), LR 42:63 (January 2016), LR 42:

§16903. Direct Support Professional Wages

A. The minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect at the time.

1. - 6. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2169 (October 2015), LR 42:

Implementation of the provisions of this Rule may be

contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have

no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Home and Community-Based Services Waivers
Residential Options Waiver
Unit of Reimbursement
Docket # 04282016-6
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark".

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

**Topic - Home and Community-Based Services; Waivers;
Residential Options; Waiver- Unit of Reimbursement**

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. James Varren	9121 Interline Ave Ste 10A	225-218-4389	Home town Senior Care
2. Kim Kennedy	628 N 4th St BR	225- 342-4464	OCDD/DHH
3. Cornette Scott	State of Louisiana, Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	Medical Policy & Compliance
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services – Residential Options Waiver – Unit of Reimbursement
Public Hearing Date: April 28, 2016
Docket No. : 04282016-6
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Notice of Intent)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

RE: Notices of Intent for Units of Reimbursement and Rate Methodology for Home and Community-Based Services Waivers

This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: "The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate." The Department shares your concerns

Amitai Heller Response
May 5, 2016
Page 2

and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers – Supports Waiver – Unit of Reimbursement.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which the Department of Health and Hospitals staff were present. Also present was James Warren with Hometown Senior Care. No oral testimony was given. However, written comments were received from the Amitai Heller of the Advocacy Center regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. summary of all written comments received by the agency; and
5. the agency's response to comments from Amitai Heller.

REG/WJR/CEC

Attachments (5)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver
Unit of Reimbursement
(LAC 50:XXI.6101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Supports Waiver in order to adopt requirements mandating that providers utilize the electronic verification system designated by the department for automated scheduling, time and attendance tracking and billing for certain home and community-based services (*Louisiana Register*, Volume 41, Number 7).

Act 299 of the 2011 Louisiana Legislative Session directed the department to implement certain policy and licensing provisions governing home and community-based services (HCBS) and mandated cost reporting for HCBS providers. In compliance with

Act 299, the department has determined that it is necessary to amend the provisions governing the Supports Waiver in order to further clarify the reimbursement methodology, remove language that provides historical information pertaining to the rate reimbursement and revise the terminology associated with Supports Waiver reimbursements.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Unit of Reimbursement

A. The reimbursement for all services will be paid on a per claim basis. The reimbursement rate covers both service provision and administration. Services which utilize a prospective flat rate of one quarter hour (15 minutes) will not be paid for the provision of less than one quarter hour of service.

B. - G. ...

H. Direct Support Professionals Wages. The minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect at the time.

H.1. - H.9.d. Repealed.

I. ...

J. - L.1. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), LR 37:2158 (July 2011), LR 39:1050 (April 2013), LR 40:82 (January 2014), LR 40:2587 (December 2014), LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as

described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Home and Community-Based Services Waivers
Supports Waiver
Unit of Reimbursement
Docket # 04282016-7
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark", written over a horizontal line.

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16
Date

DHH/BHSF PUBLIC HEARING

**Topic - Home and Community-Based Services; Waivers;
Support; Waiver- Unit of Reimbursement**

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. James Warren	9121 Interline Ave 10A	225-218-4384	Hometown Senior Care
2. Kim Kennedy	628 N. 4th Str. BR	225-342 4464	OCDD/DHH
3. Cornette Scott	State of Louisiana Dept. of Health Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225- 324 342-3881	Medicaid Policy & Compliance
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services – Supports Waiver – Unit of Reimbursement
Public Hearing Date: April 28, 2016
Docket No. : 04282016-7
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Notice of Intent)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: <ol style="list-style-type: none"> 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

RE: Notices of Intent for Units of Reimbursement and Rate Methodology for Home and Community-Based Services Waivers

This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: "The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate." The Department shares your concerns

Amitai Heller Response
May 5, 2016
Page 2

and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Medicaid Eligibility - Asset Verification Program.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which members of the public listed on the attached attendance roster and Department of Health and Hospitals staff were present. No oral testimony was given or written comments received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

REG/WJR/RKA

Attachments (3)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Medicaid Eligibility
Asset Verification Program
(LAC 50:III.Chapter 3)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:III.Chapter 3 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 7001(d) of the Supplemental Appropriations Act of 2008 (P.L. 110-252) created a new §1940 of the Social Security Act which requires states to implement an Asset Verification Program (AVP) to verify the assets of aged, blind or disabled applicants for, and recipients of, Medicaid benefits. Section 1940 also directed the design of an implementation schedule that would result in specific percentage goals outlined in the statute being met. The U.S. Department of Health and Human and Human Services, Centers for Medicare and Medicaid Services (CMS), recently directed the submission of a Medicaid State Plan Amendment (SPA) to ensure the implementation of an AVP in Louisiana.

In compliance with the provisions of §7001(d) of the

Supplemental Appropriations Act and §1940 of the Social Security Act, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to establish a Medicaid AVP to verify the assets of aged, blind or disabled applicants for, and recipients of, Medicaid benefits. This proposed Rule will also satisfy federal public notice requirements associated with the submission of the corresponding SPA.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 1. General Administration

Chapter 3. Asset Verification Program

§301. General Provisions

A. Pursuant to §7001(d) of the Supplemental Appropriations Act of 2008 (P.L. 110-252) and §1940 of the Social Security Act, the Department hereby establishes provisions to implement an Asset Verification Program (AVP) for Louisiana Medicaid.

B. The Department will provide for the verification of assets for the purposes of determining or redetermining (renewing) Medicaid eligibility for aged, blind and disabled Medicaid applicants and recipients of Medicaid using an asset verification system (AVS) which meets the following requirements.

1. The request and response system will be an electronic system and meet the following criteria.

a. Verification inquiries will be sent electronically via the internet or similar means from Medicaid to the financial institution (FI).

b. The system will not be based on mailing paper-based requests.

c. The system will have the capability to accept responses electronically.

C. The system will be secure, based on a recognized industry standard of security.

D. The system will establish and maintain a database of the FIs that will participate in the Department's AVS as mandated by federal requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of

the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is

scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Medicaid Eligibility
Asset Verification Program
Docket # 04282016-9
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark", written over a horizontal line.

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16
Date

DHH/BHSF PUBLIC HEARING

Topic - Medicaid Eligibility - Asset Verification Program

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Zekeidra P. Knight	628 N. 4th St Baton Rouge, LA 70802	225.342.6943	DHH/BHSF
2. Cornette Scott	State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	Medicaid Policy & Compliance
3.			
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John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Medicaid Eligibility - Recipient Appeals and Fair Hearing Requests.

The Department published a Notice of Intent on this proposed Rule in the March 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 3). A public hearing was held on April 28, 2016 at which members of the public listed on the attached attendance roster and Department of Health and Hospitals staff were present. No oral testimony was given or written comments received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

REG/WJR/RKA

Attachments (3)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Medicaid Eligibility
Recipient Appeals and Fair Hearing Requests
(LAC 50:III.101)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal and replace the provisions of Section T-100 of the *Medicaid Eligibility Manual* governing Fair Hearings which was promulgated in the May 20, 1996 Rule, and to adopt LAC 50:III.101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated the *Medicaid Eligibility Manual* in its entirety by reference in May 1996, including Section T-100 addressing fair hearings (*Louisiana Register*, Volume 23, Number 5). The provisions governing recipient appeals and fair hearings was also incorporated into the Medicaid State Plan. The department has now determined that these provisions are outdated and require revisions to ensure that the provisions are consistent with current Medicaid Program operations. This proposed Rule will also satisfy public notice requirements in order to submit a corresponding amendment to the Medicaid State Plan to make the necessary updates.

Therefore, the department proposes to repeal and replace the provisions of Section T-100 of the *Medicaid Eligibility Manual* governing fair hearings in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in Title 50, Part III governing Medicaid eligibility, and to meet the technical requirements for submission of a corresponding Medicaid State Plan amendment.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part III. Eligibility Subpart 1. General Administration

Chapter 1. General Provisions

§101. Fair Hearings

A. Every applicant for, and enrollee of, Medicaid Program benefits has the right to appeal an agency action or decision, and has the right to request a fair hearing in the presence of an impartial hearing officer.

1. *Action*—a termination, suspension or reduction of Medicaid eligibility or covered services. This includes terminations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State (Medicaid Program) with regard to the preadmission screening and annual resident review requirements of §1917(e)(7) of the Social Security Act.

2. *Exception*. Enrollees are not entitled to a fair hearing if the sole issue is a federal or state law requiring an

automatic change adversely affecting some or all Medicaid recipients.

2. Applicants and enrollees shall be informed in writing of the right to request a fair hearing and of the procedure to do so.

B. The Medicaid Program may delegate the responsibility for conducting fair hearings to another state agency. Any agency with delegated authority to conduct fair hearings on behalf of the Medicaid Program shall comply with the federal notice and fair hearing requirements pursuant to 42 CFR 431, Subpart E, and all other Medicaid Program and state regulations governing fair hearings.

C. Applicants and enrollees must request a fair hearing within 30 days of the date of the adequate and/or timely decision notice issued by the Medicaid Program or its designee.

D. Maintenance of Services Pending a Fair Hearing Request

1. If the Medicaid Program sends a notice to the recipient as required under 42 CFR 431.211 or §431.214, and the recipient requests a hearing before the date of action, the recipient's services will not be terminated or reduced by the Medicaid Program until a decision is rendered after the hearing unless:

a. it is determined at the hearing that the sole issue is one of federal or state law or policy; and

b. the recipient is promptly informed by Medicaid, in writing, that the services are to be terminated or reduced pending the hearing decision.

2. If the Medicaid Program's action is sustained by the hearing decision, recovery procedures may be instituted against the applicant/recipient to recoup the cost of any services furnished, to the extent they were furnished solely by reason of this §101.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to

individual or community asset development as described in R.S.
49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Medicaid Eligibility
Recipient Appeals and Fair Hearing Requests
Docket # 04282016-10
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark".

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Medicaid Eligibility - Recipient Appeals and Fair Hearing Requests

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. ZeKeidra P. Knight	628 N. 4th St Baton Rouge, LA 70802	225.342.6943	DHH BHSF
2. Cornette Scott	State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge LA 70802	225-342-3881	Medicaid Policy & Compliance
3.			
4.			
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6.			

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Direct Service Worker Registry.

The Department published a Notice of Intent on this proposed Rule in the December 20, 2015 issue of the *Louisiana Register* (Volume 41, Number 12). A public hearing was held on January 28, 2016 at which only the Department of Health and Hospitals staff were present. No oral testimony was given. However, written correspondence was received regarding this proposed Rule.

Upon further discussion with stakeholders, the Department determined that further revisions to these provisions were necessary which resulted in non-technical, substantive changes to the December 20th Notice of Intent. The Department subsequently published a Substantive Changes and Public Hearing Notification Potpourri containing the non-technical, substantive changes in the March 20, 2016 issue of the *Louisiana Register*. A public hearing on the substantive revisions was held on April 28, 2016 at which only the Department of Health and Hospitals staff was present. No oral testimony was given, nor written correspondence received regarding these substantive changes.

The Department anticipates adopting a revised Notice of Intent, which incorporates the non-technical, substantive revisions, as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the January 28, 2016 public hearing certification;
3. the January 28, 2016 public hearing roster;
4. a copy of the Substantive Changes and Public Hearing Notification Potpourri;
5. the April 28, 2016 substantive changes public hearing certification;
6. the April 28, 2016 substantive changes public hearing attendance roster;
7. summary of all written comments received by the agency; and
8. the agency's response to comments from Rita J. Finn.

KHK/WJR/CEC

Attachments (8)

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Direct Service Worker Registry
(LAC 48:I.Chapter 92)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 92 as authorized by R.S. 37:1031-1034 and R.S. 40:2179-2179.1. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 451 of the 2005 Regular Session of the Louisiana Legislature and Act 29 of the 2011 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing medication administration and the performance of noncomplex nursing tasks by direct service workers (*Louisiana Register*, Volume 38, Number 12).

The department has now determined that it is necessary to amend the provisions governing the DSW Registry in order to align the DSW Registry Rule with R.S. 40:2179-40:2179.1, and to provide information on how to access the DSW Registry online database for verification purposes.

Title 48

**PUBLIC HEALTH-GENERAL
Part I. General Administration**

Subpart 3. Health Standards

Chapter 92. Direct Service Worker Registry

Subchapter A. General Provisions

§9201. Definitions

Activities of Daily Living (ADLs)—the functions or tasks which are performed either independently or with supervision that assist an individual to live in a community setting, or that provide assistance for mobility (i.e., bathing, dressing, eating, grooming, walking, transferring and toileting).

DAL—Division of Administrative Law or its successor.

Department—the Louisiana Department of Health and Hospitals (DHH).

Direct Service Worker (DSW)—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports. Examples of direct service workers employed in a licensed health care setting include, but are not limited to:

1. patient care technicians;

2. hospital aides;
3. unlicensed assistive personnel (UAPs);
4. home health aides;
5. hospice aides;
6. direct care workers;
7. mental health technicians;
8. mental health aides;
9. mental health orderlies;
10. nursing aides or hospital orderlies;
11. nursing assistants;
12. patient care aides; and/or
13. any persons hired as unlicensed direct care staff

that meet the provisions of this chapter.

Note: Those persons who are listed on the Certified Nurse Aide Registry and who are employed as certified nurse aides in a licensed nursing facility and/or a skilled nursing facility within a hospital are not included under these provisions as a direct service worker.

Disability-a physical or mental impairment which substantially limits one or more of the major life activities of an individual or who has a history of such impairment or who is regarded as having such impairment; having a condition (such as an illness or an injury) that damages or limits a person's

physical or mental abilities, either temporarily or on a permanent basis.

Elderly-persons who are elderly are considered being past middle age and approaching old age, of, or relating to, or having characteristics of older persons, or life in later years; sometimes used to describe any adult over 75 years old or individuals over 65 years old who have functional impairments.

Exploitation-the illegal or improper use or management of the funds, assets or property of an adult with disabilities or who is elderly, or the use of the power-of-attorney or guardianship of an adult with disabilities or who is elderly for one's own profit or advantage.

Finding-allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department for the following reasons:

1. after a final decision by an administrative law judge or a court of law, after all appeal delays afforded by law are exhausted; or

2. failure by the accused to timely request an appeal in accordance with the provisions of this Rule.

Health Care Provider-any health care facility, agency, or entity licensed or certified by DHH. Such entities may be

referred to in other laws, statutes and regulations as providers, agencies, clinics, residential care units, homes or facilities. Health care providers include, but are not limited to, the following:

1. nursing facilities;
2. hospice providers;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers;
7. home health agencies;
8. behavioral health providers;
9. dialysis units; or
10. home and community based services providers.

Health Standards Section(HSS)-the section of the Department of Health and Hospitals responsible for the licensing and certification of health care providers.

Independent Living Environment-Repealed.

Major life activities-functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Person-Specific Training—a set of knowledge, skills, training and abilities that address the client's strengths, restrictions relative to aging, disabilities, health care needs and related factors in order to meet the unique needs of the person receiving care.

Plan of Care—a plan that describes the assistance or services required to be provided to a person receiving home and community-based services, as defined herein. The plan also describes who shall provide the assistance and the frequency and/or duration of the services that shall be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3175 (December 2012), LR 42:

§9202. Introduction

A. The Department of Health and Hospitals (DHH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, exploitation or extortion have been

substantiated by the department, an administrative law judge, or a court of law.

B. - B.6. ...

C. Licensed health care providers shall access the registry to determine if there is a finding that a prospective hire or currently employed direct service worker has been determined to have committed abuse or neglect of an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired nor shall a current employee have continued employment with the licensed health care provider.

D. All provisions of this Chapter, except Subchapter D, §9241-§9261, Medication Administration and Noncomplex Tasks in Home and Community-Based Settings, applies to any licensed health care provider who employs direct service workers who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person.

1. Exception. Home and community-based services providers are required to meet all provisions of this Chapter, inclusive of Subchapter D, §9241-§9261, if the HCBS provider

employs direct service workers who perform medication administration and noncomplex medical tasks in the HCBS setting.

E. The provisions of this Chapter shall apply to direct service workers who are compensated, regardless of the setting, and specifically do not apply to those direct service workers listed on the Certified Nurse Aide Registry established under rules promulgated by the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:

Subchapter C. Provider Participation

§9231. Health Care Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, the licensed health care provider shall:

1. assure that the individual is at least 18 years of age, and that they have the ability to read, write and comprehend the English language; and
2. access the registry in accordance with the provisions of §9202.C.

B. The health care provider shall have a written process to check the registry every six months to determine if any currently employed direct service worker or trainee has been placed on the registry with a finding that he/she has been determined to have committed abuse or neglect of an individual being supported or misappropriated the individual's property or funds.

1. The provider shall follow the agency's process in demonstration of compliance with this procedure.

2. If there is such a finding on the registry, the employee shall not have continued employment with the licensed health care provider in accordance with the provisions of §9202.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:

Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012), amended LR 42:

§9245. Training Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012), amended LR 42:

§9249. Authorized Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. - A.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012), amended LR 42:

§9257. Liability

A. - B. ...

C. Notwithstanding any other provision of law, licensed agencies that employ direct service workers shall be liable for acts or omissions of the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012), amended LR 42:

§9261. Violations and Noncompliance

A. ...

B. In accordance with §9259.A(2), authorization for a direct service worker to perform any of the tasks specified in R.S. 37:1032 shall be terminated if the registered nurse certifies that the direct service worker can no longer perform the prescribed tasks safely and the direct service worker shall immediately cease performing such procedures.

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), amended LR 42:

Subchapter E. Violations

§9273. Allegations of Direct Service Worker Wrong-Doing

A. The department, through the Division of Administrative Law, or its successor, provides a process for the review, investigation, and appeal of all allegations of wrong-doing by direct service workers. Direct service workers and trainees shall not:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:

§9275. Notice of Violation

A. When there are substantiated allegations against the direct service worker, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following:

1. - 2. ...

3. the right to request from HSS an informal discussion (informal dispute resolution process); and

4. the right to request from the Division of Administrative Law an administrative hearing (appeal).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), LR 42:

§9277. Informal Dispute Resolution

A. When a direct service worker feels that he/she has been wrongly accused, the following procedure shall be followed:

1. The direct service worker may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the department's notice of violation. The request for an IDR shall be made to the HSS in writing.

2. The IDR is designed:

a. to provide an opportunity for the direct service worker to informally discuss the allegations that make the basis for placement of the finding;

b. - c. ...

3. An IDR session will be arranged within 20 days of receipt of the written request.

4. During the IDR, the direct service worker will be afforded the opportunity to:

a. talk with agency personnel assigned to the IDR;

b. - e. ...

5. Notice of the results of the IDR decision will be forwarded to the DSW in writing. Such written notice will include any further opportunities for appeal, if necessary and/or appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:

Subchapter F. Administrative Hearings

§9285. General Provisions

A. ...

1. The request for an administrative hearing shall be made in writing to the Division of Administrative Law, or its successor.

2. The request shall contain a statement setting forth the specific allegations which the direct service worker disputes and the reasons for this dispute.

A.3. - B. ...

B.1. - B.1.c. Repealed.

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the Administrative Procedure Act.

1. - 9. Repealed.

D. If there is a final and binding administrative hearing decision to place a finding on the DSW Registry against the direct service worker, the department shall place the direct service worker's name and the adverse findings on the DSW Registry. The occurrence and findings will remain on the DSW Registry permanently.

D.1. - H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:

§9287. Preliminary Conferences

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:99 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), repealed LR 42:

§9293. Failure to Appear at Administrative Hearings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006), amended LR 33:100 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3181 (December 2012), repealed LR:42

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed

Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION

January 28, 2016

9:30 a.m.

RE: Direct Service Worker Registry
Docket # 01282016-1
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on January 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in black ink, appearing to read "Kaylin A. Haynes".

Kaylin A. Haynes
Medicaid Policy and
Compliance Section

01/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Direct Service Worker Registry

Date - January 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Yolanda Ellis	628 North Fourth St. Baton Rouge, LA 70802	(225) 342-5042	DHH Policy and Compliance
2. Brenda Blanchard	"	(225) 342-2471	HSS
3. Mary Sept	"	225-342-32400	HSS
4. Kirsten Clebert	"	225-219-1149	DHH / OAA S
5.			
6.			

POTPOURRI

Department of Health and Hospitals
Bureau of Health Services Financing

Substantive Changes and Public Hearing Notification
Direct Service Worker Registry
(LAC 48:I.Chapter 92)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent in the December 20, 2015 edition of the *Louisiana Register* (LR 41:2721-2724) to amend LAC 48:I.Chapter 92. This Notice of Intent proposed to amend the provisions governing the DSW Registry in order to align the DSW Registry Rule with R.S. 40:2179-40:2179.1, and to provide information on how to access the DSW Registry online database for verification purposes.

The department conducted a public hearing on this Notice of Intent on January 28, 2016 to solicit comments and testimony on the proposed Rule. Upon further discussion with stakeholders, the department subsequently determined that further revisions to Chapter 92 were necessary, which resulted in non-technical, substantive changes to the December 20, 2015 Notice of Intent.

Taken together, all of these proposed revisions will closely align the proposed Rule with the Department's original intent and the concerns brought forth in discussions with

stakeholders after publication of the Notice of Intent. No fiscal or economic impact will result from the amendments proposed in this notice.

Title 48

**PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Health Standards**

Chapter 92. Direct Service Worker Registry

Subchapter A. General Provisions

§9201. Definitions

Activities of Daily Living (ADLs)—the functions or tasks which are performed by an individual in a typical day, either independently or with supervision/assistance. Activities of daily living may include, but are not limited to, bathing, dressing, eating, grooming, walking, transferring and/or toileting).

Assistance with Activities of Daily Living—services that provide assistance with activities of daily living. Such assistance may be the actual performance of the task for the individual, or may provide hands-on assistance with the performance of the tasks, or may be include supervision and prompting to allow the individual to self-perform such tasks.

Direct Service Worker (DSW)—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports. Examples of direct service workers employed or contracted in a licensed and/or certified health care setting include, but are not limited to:

1. - 13. ...

Note: Those persons who are listed on the Certified Nurse Aide Registry and who are employed as certified nurse aides in a licensed and/or certified nursing facility and/or a skilled nursing facility within a hospital are not included under these provisions as a direct service worker.

Elderly—any adult over 75 years old or individuals over 65 years old who have functional impairments.

Employed—performance of a job or task for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is directly hired for an on staff position.

Health Care Provider-any health care facility, agency, or entity licensed and/or certified by DHH. Such entities may be referred to in other laws, statutes and regulations as providers, agencies, clinics, residential care units, homes or facilities. Health care providers include, but are not limited to, the following:

1. - 10. ...

Health Standards Section (HSS)-the section of the Department of Health and Hospitals responsible for the licensing and/or certification of health care providers.

Provider:

1. an entity that furnishes care and services to consumers and has been licensed and/or certified by the department to operate in the state;

2. in the case of an authorized departmental self-directed program, provider shall be the entity or individual as specified by the program employing or contracting the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95

(January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3175 (December 2012), LR 42:

§9202. Introduction

A. - B.6. ...

C. Licensed and/or certified health care providers shall access the registry to determine if there is a finding that a prospective hire or currently employed or contracted direct service worker has been determined to have committed abuse or neglect of an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired nor shall a current employee have continued employment with the licensed and/or certified health care provider.

D. All provisions of this Chapter, except Subchapter D, §9241-§9261, Medication Administration and Noncomplex Tasks in Home and Community-Based Settings, applies to any licensed and/or certified health care provider who employs or contracts direct service workers who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person.

1. Exception. Home and community-based services providers are required to meet all provisions of this Chapter,

inclusive of Subchapter D, §9241-§9261, if the HCBS provider employs or contracts direct service workers who perform medication administration and noncomplex medical tasks in the HCBS setting.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:

Subchapter C. Provider Participation

§9231. Health Care Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, the licensed and/or certified health care provider shall:

1. - 2. ...

B. The health care provider shall have a written process to check the registry every six months to determine if any currently employed or contracted direct service worker or trainee has been placed on the registry with a finding that he/she has been determined to have committed abuse or neglect of

an individual being supported or misappropriated the individual's property or funds.

1. ...

2. If there is such a finding on the registry, the employee shall not have continued employment with the licensed and/or certified health care provider in accordance with the provisions of §9202.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:

Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. ...

1. be employed or contracted by an agency licensed and/or certified by the Health Standards Section or employed as part of an authorized departmental self-directed program; and

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 38:3177
(December 2012), amended LR 42:

**§9245. Training Requirements for the Performance of
Medication Administration and Noncomplex Tasks in Home and
Community-Based Settings**

A. -C. ...

D. Any direct service worker currently employed or
contracted to perform the procedures authorized by this Chapter
shall complete the training required by this Subchapter no later
than 12 months after promulgation of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S.
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 38:3177
(December 2012), amended LR 42:

§9253. Registered Nurse Responsibilities

A. - A.6. ...

7. completing and submitting the required
documentation to the licensed and/or certified agency employing
or contracting the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S.
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 38:3178
(December 2012), amended LR 42:

§9257. Liability

A. ...

B. Any physician licensed to practice medicine by the
Louisiana State Board of Medical Examiners, whether or not the
physician developed the person's plan of care, including but not
limited to the prescribed medical regime, who is rendering
professional medical care services shall not be liable for any
civil damages as a result of any negligent or intentional act or
omission of the direct service worker or licensed and/or
certified agency.

C. Notwithstanding any other provision of law, licensed
and/or certified agencies that employ or contract direct service
workers shall be liable for acts or omissions of the direct
service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S.
37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 38:3179
(December 2012), amended LR 42:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. A public hearing on these substantive changes to the proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
April 28, 2016
9:30 a.m.

RE: Substantive Changes and Public Hearing Notification
Direct Service Worker Registry
Docket # 04282016-11
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark", written over a horizontal line.

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Substantive Changes and Public Hearing Notification Direct Service Worker Registry

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Zekeidra P. Knight	628 N. 4 th St Baton Rouge, LA 70802	225.342.6413	DHH / BHSF
2. Cornette Scott	Department of Health & Hospitals State of LA 628 N. 4 th Street Baton Rouge, LA 70802	225-342-3881	Medicaid Policy & Compliance
3.			
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Substantive Changes and Public Hearing Notification - Direct Service Worker Registry
Public Hearing Date: April 28, 2016
Docket No. : 04282016-11
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Potpourri)
Rita J. Finn, Regulatory Director, Louisiana Nursing Home Association	Medicaid Policy Email Account	Request that the Department reconsider the length of time unlicensed caregivers will be allowed to provide direct care without having obtained adequate training.



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Rita J. Finn, MSN, RN
Regulatory Director
Louisiana Nursing Home Association
7844 Office Park Blvd.
Baton Rouge, LA 70809

Dear Ms. Finn:

**RE: Substantive Changes and Public Hearing Notification Potpourri
Direct Service Worker Registry**

This letter is in response to your correspondence regarding the Potpourri for Substantive Changes and Public Hearing Notification - Direct Service Worker Registry which was published in the March 20, 2016 edition of the *Louisiana Register*.

The Department would like to thank you for taking the time to provide comments regarding the non-technical, substantive revisions to the Direct Service Worker Registry Notice of Intent which was published in the December 20, 2015 edition of the *Louisiana Register*. This Notice of Intent proposed to amend the provisions governing the Direct Service Worker Registry in order to align the Direct Service Worker Registry Rule with R.S. 40:2179-40:2179.1 and to provide information on how to access the online database for verification purposes.

The Department has noted your concerns and will take them under consideration as we move forward with the administrative rulemaking process to establish clear and concise provisions governing the Direct Service Worker Registry.

I would like to thank you for your continued interest in the administrative rulemaking process and hope that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity or rulemaking activity relative to the health care licensing standards,

Rita J. Finn Response
May 5, 2016
Page 2

you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,

A handwritten signature in blue ink that reads "Cecile Castello". The signature is written in a cursive style.

Cecile Castello
Health Standards Section Director

CC/DAB/VYD

c: Kimberly Humbles
Lou Ann Owen

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

May 5, 2016

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Taylor F. Barras, Speaker of the House
The Honorable Fred H. Mills, Jr., Chairman, Senate Committee on Health and Welfare
The Honorable Frank A. Hoffmann, Chairman, House Committee on Health and Welfare
The Honorable Eric LaFleur, Chairman, Senate Finance Committee
The Honorable Cameron Henry, Chairman, House Appropriations Committee

FROM: Rebekah E. Gee MD, MPH
Secretary

A handwritten signature in blue ink, appearing to read "Rebekah E. Gee", written over the printed name of the Secretary.

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Personal Care Services – Long Term.

The Department published a Notice of Intent on this proposed Rule in the January 20, 2016 issue of the *Louisiana Register* (Volume 42, Number 1). A public hearing was held on February 25, 2016 at which only the Department of Health and Hospitals staff were present. No oral testimony was given, nor written correspondence received regarding this proposed Rule.

In order to comply with the directives of Act 299 of the 2011 Louisiana Legislative Session, the Department determined that further revisions to these provisions were necessary which resulted in non-technical, substantive changes to the January 20th Notice of Intent. The Department subsequently published a Substantive Changes and Public Hearing Notification Potpourri containing the non-technical, substantive changes in the March 20, 2016 issue of the *Louisiana Register*. A public hearing on the substantive revisions was held on April 28, 2016 at which only the Department of Health and Hospitals staff was present. No oral testimony was given. However, written comments were received from the Amitai Heller of the Advocacy Center regarding this proposed Rule.

The Department anticipates adopting a revised Notice of Intent, which incorporates the non-technical, substantive revisions, as a final Rule in the June 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the February 25, 2016 public hearing certification;
3. the February 25, 2016 public hearing roster;
4. a copy of the Substantive Changes and Public Hearing Notification Potpourri;
5. the April 28, 2016 substantive changes public hearing certification;
6. the April 28, 2016 substantive changes public hearing attendance roster;
7. summary of all written comments received by the agency; and
8. the agency's response to comments from Amitai Heller.

KHK/WJR/CEC

Attachments (8)

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services - Long-Term
(LAC 50:XV.Chapter 129)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.Chapter 129 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing long-term personal care services (LT-PCS) in order to restrict the number of participants an individual can concurrently represent, adopt provisions for the removal of service providers from the LT-PCS freedom of choice list when certain departmental proceedings are pending against the provider, offer freedom of choice to the provider's LT-PCS participants, and clarify the provisions governing service delivery (*Louisiana Register*, Volume 41, Number 3).

The department has now determined that it is necessary to

amend the provisions governing LT-PCS in order to 1) terminate the Louisiana Personal Options Program (La POP); 2) revise the eligibility requirements for shared LT-PCS; and 3) clarify the provisions governing the activities of daily living.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XV. Services for Special Populations Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. - F.1.b. ...

2. The functions of a responsible representative are to:

a. assist or represent, as needed, the recipient in the assessment, care plan development and service delivery processes; and

2.b. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 39:2506 (September 2013), LR 41:540 (March 2015), LR 42:

§12902. Participant Direction Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), repealed LR 42:

§12903. Covered Services

A. *Personal care services* are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by the recipient. ADLs include tasks such as:

1. - 4. ...

5. *transferring*-the manner in which an individual moves from one surface to another (excludes getting on and off the toilet, and getting in and out of the tub/shower);

A.6. - C. ...

1. If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

a. Repealed.

D. ...

E. For participants receiving LT-PCS with the Adult Day Health Care (ADHC) Waiver, personal care services may be provided by one worker for up to three long-term personal care service recipients who live together, and who have a common direct service provider.

F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and

Hospitals, Office of Aging and Adult Services, LR 34:2578
(December 2008), amended by the Department of Health and
Hospitals, Bureau of Health Services Financing and the Office of
Aging and Adult Services, LR 39:2507 (September 2013), LR 42:

§12905. Eligibility Criteria

A. Personal care services shall be available to recipients who are 65 years of age or older, or 21 years of age or older and have a disability. Persons with a disability must meet the disability criteria established by the Social Security Administration.

B. - B.3.c.

C. Persons designated as the responsible representative of an individual receiving services under LT-PCS may not be the paid direct service worker of the individual they are representing.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2579 (December

2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), LR 42:

§12907. Recipient Rights and Responsibilities

A. Recipients who receive services under the Long-Term Personal Care Services Program have the right to actively participate in the development of their plan of care and the decision-making process regarding service delivery. Recipients also have the right to freedom of choice in the selection of a provider of personal care services and to participate in the following activities:

1. - 6. ...

7. changing the personal care worker assigned to provide their services;

A.8. - B. ...

C. - C.13. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and

Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2508 (September 2013), LR 42:

§12910. La POP Standards for Participation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 39:2508 (September 2013), repealed LR 42:

§12911. Staffing Requirements

A. All staff providing direct care to the recipient must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. - B.1.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health

and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2508 (September 2013), LR 42:

§12912. Training

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2509 (September 2013), repealed LR 42:

§12913. Service Delivery

A. ...

B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state without approval of OAAS or its designee.

C. Participants are not permitted to live in a home or property owned, operated, or controlled by an owner, operator,

agent, or employee of a licensed provider of long-term care services, and providers are prohibited from providing and billing for services under these circumstances. Participants may not live in the home of a direct support worker unless the direct support worker is related by blood or marriage to the participant.

1. ...

D. Place(s) of service must be documented in the plan of care and service logs.

E. It is permissible for an LT-PCS recipient to use his/her approved LT-PCS weekly allotment flexibly provided that it is done so in accordance with the recipient's preferences and personal schedule and is properly documented in accordance with OAAS policy.

F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:2833 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Financing and the Office of Aging

and Adult Services, LR 39:2509 (September 2013), LR 42:

§12917. Reimbursement Methodology

A. - B.8.d. ...

C. Effective for dates of service on or after February 1, 2009, the reimbursement rate for long term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

1. - 3. Repealed.

D. Effective for dates of service on or after August 4, 2009, the reimbursement rate for long-term personal care services shall be reduced by 4.8 percent of the rate on file as of August 3, 2009.

E. Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010.

F. Effective for dates of service on or after January 1, 2011, the reimbursement rate for long-term personal care services shall be reduced by 5.8 percent of the rate on file as of December 31, 2010.

G. Effective for dates of service on or after April 20, 2011, shared long-term personal care services shall be reimbursed:

1. 80 percent of the rate on file as of April 19,

2011 for two participants; and

2. 70 percent of the rate on file as of April 19, 2011 for three participants.

H. Effective for dates of service on or after July 1, 2012, the reimbursement rate for long-term personal care services furnished to one participant shall be reduced by 1.5 percent of the rate on file as of June 30, 2012.

H.1. - I. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), LR 37:3267 (November 2011), LR 39:1780 (July 2013), LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding

this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, February 25, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
February 25, 2016
9:30 a.m.

RE: Personal Care Services—Long-Term
Docket # 02252016-4
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on February 25, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Robert K. Andrepont".

Robert K. Andrepont
Medicaid Policy and
Compliance Section

02/25/16
Date

DHH/BHSF PUBLIC HEARING

Topic – Personal Care Services – Long-Term

Date – February 25, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	State of Louisiana Department of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	DHH - Medicaid Policy & Compliance
2. Kirsten Clebert	OAS	225-219-1149	DHH - OAS
3. Michelle Renée	State of LA - DHH 628 N. 4th St. Baton Rouge, LA 70802	225-342-5691	DHH - Medicaid Policy & Compliance
4.			
5.			
6.			

POTPOURRI

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

Substantive Changes and Public Hearing Notification
Personal Care Services - Long-Term
(LAC 50:XV.Chapter 129)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent in the January 20, 2016 edition of the Louisiana Register (LR 42:131-134) to amend LAC 50:XV.Chapter 129. This Notice of Intent proposed to amend the provisions governing long-term personal care services (LT-PCS) in order to 1) terminate the Louisiana Personal Options Program (La POP); 2) revise the eligibility requirements for shared LT-PCS; and 3) clarify the provisions governing the activities of daily living.

Act 299 of the 2011 Louisiana Legislative Session directed the department to implement certain policy and licensing provisions to home and community-based services (HCBS) providers and mandate cost reporting for these providers. The department has determined that further revisions to LAC 50:XV.12917 are necessary to ensure compliance with these requirements.

Taken together, all of these proposed revisions will closely align the proposed Rule with the Department's original intent and with the requirements of Act 299. No fiscal or

economic impact will result from the amendments proposed in this notice.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 9. Personal Care Services**

Chapter 129. Long Term Care

§12917. Unit of Reimbursement

A. Reimbursement for personal care services shall be a prospective flat rate for each approved unit of service that is provided to the recipient. One quarter hour (15 minutes) is the standard unit of service for personal care services.

Reimbursement shall not be paid for the provision of less than one quarter hour (15 minutes) of service. Additional reimbursement shall not be available for transportation furnished during the course of providing personal care services.

B. The minimum hourly rate paid to personal care workers shall be at least the current federal minimum.

B.1. - I. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult

Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), LR 37:3267 (November 2011), LR 39:1780 (July 2013), LR 42:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. A public hearing on these substantive changes to the proposed Rule is scheduled for Thursday, April 28, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION

April 28, 2016

9:30 a.m.

RE: Substantive Changes and Public Hearing Notification
Personal Care Services – Long Term
Docket # 04282016-12
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on April 28, 2016 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in blue ink, appearing to read "Cedric E. Clark", written over a horizontal line.

Cedric E. Clark
Medicaid Policy and
Compliance Section

04/28/16

Date

DHH/BHSF PUBLIC HEARING

Topic - Substantive Changes and Public Hearing Notification Personal Care Services-Long-Term

Date - April 28, 2016

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	Department of Health & Hospitals 628 N. 4th Street Baton Rouge LA 70802	225-342-3881	Medicaid Policy & Compliance
2.			
3.			
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Substantive Changes and Public Hearing Notification - Personal Care Services – Long-Term
Public Hearing Date: April 28, 2016
Docket No. : 04282016-12
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments (March 20, 2016 Potpourri)
Amitai Heller, Staff Attorney, Advocacy Center	Medicaid Policy Email Account	Urges the Department to: <ol style="list-style-type: none"> 1. adopt a rate methodology that creates a mechanism that accommodates higher cost individuals. 2. be cognizant that the rate methodology for home and community based services must be at least as generous as the rate methodology for nursing facilities.

John Bel Edwards
GOVERNOR



Rebekah E. Gee MD, MPH
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

May 5, 2016

Amitai Heller
Staff Attorney
Advocacy Center
8325 Oak Street
New Orleans, LA 70118

Dear Amitai Heller:

RE: Notices of Intent for Units of Reimbursement and Rate Methodology for Home and Community-Based Services Waivers

This letter is in response to your correspondence regarding the Notices of Intent for Units of Reimbursement and Rate Methodology for home and community-based services (HCBS) waivers. The notices and the associated Substantive Changes and Public Hearing Notification Potpourri for Personal Care Services – Long-Term were published in the March 20, 2016 issue of the *Louisiana Register* and are attached to this correspondence per your request. In accordance with La. R.S. 49:953, the Department respectfully takes this opportunity to respond to your comments.

As you are aware, the U.S. Department of Labor issued a Final Rule which provided for payment of overtime to homecare workers. The Department is aware that this Rule may have an impact on certain providers and is monitoring service provisions so that it can respond to any adverse consequences, if possible. The Department is also aware of its responsibilities under the Americans with Disabilities Act (ADA) and the mandates of *Olmstead v. L.C.*

In regards to the rates under this methodology, the Department sought a methodology that better took into account the costs of providing services to the program recipients. In order to accomplish this task, the Department turned to an analysis of labor costs and cost reports of HCBS providers. In taking this approach, the HCBS rate setting model incorporated overtime estimates in the following capacity and under the following authority within the Rule: "The Department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider costs reports is considered appropriate." The Department shares your concerns

Amitai Heller Response
May 5, 2016
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and will, at such time as the methodology is appropriated, be monitoring the rates under this methodology to ensure they accomplish the goals of the Department in providing quality services to recipients. This would include ensuring that the methodology does not unfairly impact recipients that have higher needs.

The Department would like to thank you for your continued interest in the administrative rulemaking process and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Rulemaking Unit Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



Jen Steele
Interim Medicaid Director

Attachments (7)

JS/DAB/VYD

c: Michelle Alletto
Charles Ayles
Darlene Budgewater
Kirsten Clebert
Beth Jordan
Tara LeBlanc
Lou Ann Owen
Melanie Richard
Stephen Russo
Kimberly Sullivan
Sheree Taillon
Mark A. Thomas
Robin Wagner