



State of Louisiana
Louisiana Department of Health
Office of the Secretary

January 10, 2025

Via Statutorily Prescribed Email

To: The Honorable Patrick McMath, Chairman, Senate Health & Welfare Committee
The Honorable Dustin Miller, Chairman, House Health & Welfare Committee

From: Michael Harrington, MBA, MA
Secretary

Re: Second Report to Proposed Amendments to LAC 50:XXI.Chapters 81, 85, 86, 93, and 95
– Home and Community-Based Services Waivers – Community Choices Waiver

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Home and Community-Based Services Waivers – Community Choices Waiver, LAC 50:XXI.Chapters 81, 85, 86, 93, and 95.

A Notice of Intent on the proposed amendments was published in the November 20, 2024 issue of the *Louisiana Register* (LR 50:1741). No written comments were received and there was no request for a public hearing during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2024 Notice of Intent when it is published as a final rule in the February 20, 2025 issue of the *Louisiana Register*.

Please contact Lindsey Nizzo, Lindsey.Nizzo@la.gov if you have any questions or require additional information about this matter.

Cc: Kimberly Sullivan, Medicaid Director, LDH
Brian Bennett, Medicaid Deputy Director, LDH
Catherine Brindley, Medicaid Program Manager, LDH
Geary Williams, OAAS Assistant Secretary, LDH
Kirsten Clebert, OAAS Program Manager, LDH
Bethany Blackson, Chief of Staff, LDH
Andrea Trantham, Editor, *Louisiana Administrative Code*, Office of the State Register

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Community Choices Waiver
(LAC 50:XXI.Chapters 81, 85, 86, 93, and 95)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.Chapters 81, 85, 86, 93, and 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend the provisions governing the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

**Part XXI. Home and Community-Based Services
Waivers**

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

**§8105. Programmatic Allocation of Waiver
Opportunities**

A. ...

B. Community Choices Waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for Community Choices Waiver opportunities, in the order listed:

1. - 4. ...

5. individuals who require expedited waiver services, who are approved for the maximum amount of services allowable under LT-PCS and will require institutional placement, unless offered an expedited waiver opportunity;

6. individuals who are not presently receiving home and community-based services (HCBS) under another Medicaid program, including, but not limited to:

a. Program of All-Inclusive Care for the Elderly (PACE);

b. long term—personal care services (LT-PCS); and/or

c. any other 1915(c) waiver; and

7. all other eligible individuals on the CCW registry, by date of first request for services.

C. - D. ...

E. Notwithstanding the priority group provisions, up to 300 Community Choices Waiver opportunities may be

granted to qualified individuals who require expedited waiver services. These individuals shall be offered an opportunity on a first-come, first-served basis.

1. To be considered for an expedited waiver opportunity, the individual must, at the time of the request for the expedited opportunity, be approved for the maximum amount of services allowable under LT-PCS and require institutional placement, unless offered an expedited waiver opportunity.

2. The following criteria shall be considered in determining whether to grant an expedited waiver opportunity:

- a. ...
- b. the death or incapacitation of an informal caregiver leaves the individual without other supports;
- c. ...
- d. the individual lives alone and has no access to informal support; or
- e. for other reasons, the individual lacks access to adequate informal support to prevent nursing facility placement.

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 37:3517 (December 2011), amended LR 39:319 (February 2013), LR 39:1778 (July 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1896 (October 2018), LR 45:756 (June 2019), LR 50:785 (June 2024), LR 51:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. - C.2.d.vi. ...

D. Employee Qualifications. All employees under the self-direction option must:

1. ...
2. pass required criminal history background and database checks; and
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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3523 (December 2011), amended LR 39:321 (February 2013), LR 39:1779 (July 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1900 (October 2018), LR: 49:1726 (October 2023), LR 50:787 (June 2024), LR 51:

Chapter 86. Organized Health Care Delivery System

§8601. General Provisions

A. - C. ...

D. Prior to enrollment, an OHCDs must demonstrate the ability to provide all of the CCW services.

1. For ADHC services, the OHCDs must show the ability to provide this service, only if there is a licensed ADHC provider in the service area.

2. - 8. 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 40:792 (April 2014), amended LR 41:2643 (December 2015), amended by the

Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:787 (June 2024), LR 51:

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. ...

B. All providers (with the exception of Home Delivered Meals providers), Self-Direction (SD) employers and/or Fiscal Employer Agencies (FEAs) must ensure that statewide criminal history background checks are performed on all unlicensed persons working for their agency in accordance with R.S. 40:1203.1 et seq. and/or other applicable state law upon hire.

1. Ensure that the provider or SD employer and/or FEA does not hire unlicensed persons who have a conviction that bars employment in accordance with R.S. 40:1203.3 or other applicable state law.

a. The provider, SD employer and/or FEA shall have documentation on the final disposition of all charges that bars employment pursuant to applicable state law.

2. Ensure that all employees, including contractors, have not been excluded from participation in the Medicaid programs by checking the databases upon hire and monthly thereafter.

a. The provider, SD employer and/or FEA must maintain documentation of the results of these database checks.

C. The provider shall not request payment unless the participant for whom payment is requested is receiving services in accordance with the Community Choices Waiver program provisions and the services have been prior authorized and actually provided.

D. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. OAAS or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

E. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department, or its designee.

F. Any provider of services under the Community Choices Waiver shall not interfere with the eligibility, assessment, care plan development, or care plan monitoring processes with use of methods including, but not limited to:

1. harassment;
2. intimidation; or
3. threats against program participants, members of their informal support network, LDH staff or support coordination staff.

G. Any provider of services under the Community Choices Waiver shall have the capacity and resources to provide all aspects of any service they are enrolled to provide in the specified service area.

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 37:3524 (December 2011), amended LR 39:322 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:788 (June 2024), LR 51:

Chapter 95. Reimbursement

§9501. Reimbursement and Rate Requirements

A. - G. ...

H. Personal assistance service providers and Self-Direction employers must pay their direct services workers (DSW) a minimum of \$9 per hour.

I. ADHC providers must pay their ADHC direct support workers a minimum of \$9 per hour.

J. The state has the authority to set and change provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature.

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, 508 (March 2013), repromulgated LR 39:1048 (April 2013), amended LR 39:1779 (July 2013), LR 40:793 (April 2014), LR 42:897 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1902 (October 2018), LR 47:886 (July 2021), LR 49:487 (March 2023), LR 50:788 (June 2024), LR 51:

§9503. Direct Support/Service Worker Wages, Other Benefits, and Workforce Retention Bonus Payments

A. Direct Support/Service Worker Wage Floor and Other Benefits

1. Repealed.

2. - 3. ...

4. All PAS and ADHC providers affected by this rate increase shall be subject to passing 70 percent of their rate increases directly to the direct support/service worker in various forms. These forms include a minimum wage floor of \$9 per hour and other wage and non-wage benefits. These wage floor and wage and non-wage benefits are effective for all affected direct support/service workers, including contracted workers, of any working status, whether full-time or part-time.

5. Repealed.

6. ...

B. Direct Support/Service Worker Workforce Bonus Payments

1. Repealed.

2. The PAS and ADHC direct support/service worker who provided services from April 1, 2021 to October 31, 2022 to participants, must receive at least \$250 of this \$300 monthly bonus payment paid to the provider. This bonus payment is effective for all affected direct support/service workers, including contracted workers, of any working status, whether full-time or part-time.

C. - D.1.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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 49:684 (April 2023), LR 51:

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.

Family Impact Statement

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.

Poverty Impact Statement

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 a no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

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.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on December 30, 2024.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on December 10, 2024. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on December 30, 2024 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after December 10, 2024. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based Services
Waivers—Community Choices Waiver**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 24-25. It is anticipated that \$1404 (\$702 SGF and \$702 FED) will be expended in FY 24-25 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule amends the provisions governing the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 24-25. It is anticipated that \$702 will be collected in FY 24-25 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR
NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria. Implementation of this proposed rule will not result in costs to providers and small businesses in FY 24-25, FY 25-26, and FY 26-27.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This rule has no known effect on competition and employment.

Kimberly Sullivan, JD
Medicaid Executive Director
2411#031

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office