

**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 83 and 95)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services proposes to amend LAC 50:XXI.Chapters 83 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 proposed 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 (OAAS) propose to amend the provisions governing the Community Choices Waiver in order to: 1) clarify that instrumental activities of daily living can be provided outside of the participant's home, if approved by OAAS or its designee on a case-by-case basis; 2) remove language regarding relatives that can be direct service workers (DSWs); 3) remove respiratory therapy as a service; 4) clarify the language regarding payment of DSWs at least at the current federal or state minimum hourly wage; and 5) add language regarding the state's authority to set and change

provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

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

**Subpart 7. Community Choices Waiver**

**Chapter 83. Covered Services**

**§8307. Personal Assistance Services**

A. - A.6.b. ...

B. PAS is provided in the participant's home or in another location outside of the home if the provision of these services allows the participant to participate in normal life activities pertaining to the ADLs and IADLs cited in the POC. IADLs may not be performed in the participant's home when the participant is absent from the home unless it is approved by OAAS or its designee on a case-by-case basis. There shall be no duplication of services. PAS may not be provided while the participant is admitted to or attending a program which provides in-home assistance with ADLs or IADLs or while attending or admitted to a program or setting where such assistance is provided.

C. - D.8. ...

E. PAS may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider. Waiver participants may share PAS staff

when agreed to by the participants and as long as the health and welfare of each participant can be reasonably assured. Shared PAS is to be reflected in the POC of each participant. Reimbursement rates shall be adjusted accordingly.

F. - I.6. ...

J. Participants are not permitted to receive PAS while living 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 their direct support worker unless the direct support worker is related to, and it is the choice of, the participant.

J.1. - K. ...

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 37:3519 (December 2011), amended LR 39:320 (February 2013), LR 39:1778 (July 2013), LR 40:791 (April 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1898 (October 2018), LR 47:

**§8323. Skilled Maintenance Therapy**

A. ...

B. Skilled maintenance therapy services include physical therapy, occupational therapy, and speech and language therapy.

C. Therapy services provided to participants are not necessarily tied to an episode of illness or injury and instead focus primarily on the participant's functional need for maintenance of, or reducing the decline in, the participant's ability to carry out activities of daily living.

D. - F.3.i. ...

4. - 4.g. Repealed.

G. - H. ...

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 37:3522 (December 2011), amended LR 39:321 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1899 (October 2018), LR 47:

## **Chapter 95. Reimbursement**

### **§9501. Reimbursement and Rate Requirements**

A. - F. ...

G. The minimum hourly rate paid to direct support professionals shall be at least the current federal or state minimum hourly rate.

H. 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:

**§9503. Direct Support Professionals Wage Enhancement**

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 39:323 (February 2013), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 47:

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 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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:965.2 et seq.

#### **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 Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 30, 2021.

#### **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 May 10, 2021. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 27, 2021 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 May 10, 2021. 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. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: Veronica Dent Dept.: Health

Phone: 342-3238 Office: Bureau of Health Services Financing

Return  
Address: PO Box 91030 Rule  
Title: Home and Community-Based  
Baton Rouge, LA Services Waivers  
Community Choices Waiver

Date Rule  
Takes Effect: July 20, 2021

SUMMARY  
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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

It is anticipated that implementation of this proposed rule may result in a fiscal impact to the state for FY 20-21, FY 21-22, and FY 22-23, due to the state's ability to adjust rates or pay lump-sum payments as a result of legislative appropriations, if the legislature appropriates funds in the future. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 20-21 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

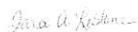
It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 20-21. It is anticipated that \$432 will be collected in FY 20-21 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed Rule amends the provisions governing the Community Choices Waiver (CCW) in order to: 1) clarify that instrumental activities of daily living can be provided outside of the participant's home, if approved by OAAS or its designee on a case-by-case basis; 2) remove language regarding relatives that can be direct service workers (DSWs); 3) remove respiratory therapy as a service because this service was never implemented nor utilized; 4) clarify the language regarding payment of DSWs at least at the current federal or state minimum hourly wage, which does not impact the fee schedule and/or payments that the state pays to provider agencies; and 5) add language regarding the state's authority to set and change provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature. It is anticipated that implementation of this proposed rule may result in cost for CCW services for FY 20-21, FY 21-22 and FY 22-23 due to the state's ability to adjust rates or pay lump-sum payments as a result of legislative appropriations, if the legislature appropriates funds in the future, and will be beneficial to providers and small businesses by clarifying and updating the CCW requirements in the administrative Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

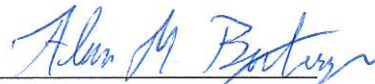
This rule has no known effect on competition and employment.



Signature of Agency Head or Designee

Tara A. LeBlanc, Interim Medicaid Executive Director  
Typed Name & Title of Agency Head or Designee  
4-6-2021

Date of Signature



Legislative Fiscal Officer or Designee

4-6-21

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the provisions governing the Community Choices Waiver (CCW) in order to: 1) clarify that instrumental activities of daily living can be provided outside of the participant's home, if approved by OAAS or its designee on a case-by-case basis; 2) remove language regarding relatives that can be direct service workers (DSWs); 3) remove respiratory therapy as a service because this service was never implemented nor utilized; 4) clarify the language regarding payment of DSWs at least at the current federal or state minimum hourly wage; which does not impact the fee schedule and/or payments that the state pays to provider agencies; and 5) add language regarding the state's authority to set and change provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature.

- B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) propose to amend the provisions governing the Community Choices Waiver in order to: 1) clarify that instrumental activities of daily living can be provided outside of the participant's home, if approved by OAAS or its designee on a case-by-case basis; 2) remove language regarding relatives that can be direct service workers (DSWs); 3) remove respiratory therapy as a service; 4) clarify the language regarding payment of DSWs at least at the current federal or state minimum hourly wage; and 5) add language regarding the state's authority to set and change provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

It is anticipated that implementation of this proposed rule may result in a fiscal impact to the state for FY 20-21, FY 21-22, and FY 22-23 due to the state's ability to adjust rates or pay lump-sum payments as a result of legislative appropriations, if the legislature appropriates funds in the future. In FY 20-21, \$864 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) \_\_\_\_\_ Yes. If yes, attach documentation.

(b) \_\_\_\_\_ NO. If no, provide justification as to why this rule change should be published at this time

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

**I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

<b>COSTS</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>
Personal Services			
Operating Expenses	\$864	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
<b>TOTAL</b>	<b>\$864</b>	<b>\$0</b>	<b>\$0</b>
<b>POSITIONS (#)</b>			

2. Provide a narrative explanation of the costs or savings shown in "A. 1.," including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 20-21, \$864 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

<b>SOURCE</b>	<b>FY 20</b>	<b>FY 21</b>	<b>FY 22</b>
State General Fund	\$432	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds	\$432	\$0	\$0
Other (Specify)			
<b>TOTAL</b>	<b>\$864</b>	<b>\$0</b>	<b>\$0</b>

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

**B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.**

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 20	FY 21	FY 22
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$432	\$0	\$0
Local Funds			
<b>TOTAL</b>	<b>\$432</b>	<b>\$0</b>	<b>\$0</b>

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

In FY 20-21, \$432 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

- A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

This proposed Rule amends the provisions governing the Community Choices Waiver (CCW) in order to: 1) clarify that instrumental activities of daily living can be provided outside of the participant's home, if approved by OAAS or its designee on a case-by-case basis; 2) remove language regarding relatives that can be direct service workers (DSWs); 3) remove respiratory therapy as a service because this service was never implemented nor utilized; 4) clarify the language regarding payment of DSWs at least at the current federal or state minimum hourly wage, which does not impact the fee schedule and/or payments that the state pays to provider agencies; and 5) add language regarding the state's authority to set and change provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule may result in cost for CCW services for FY 20-21, FY 21-22 and FY 22-23 due to the state's ability to adjust rates or pay lump-sum payments as a result of legislative appropriations, if the legislature appropriates funds in the future, and will be beneficial to providers and small businesses by clarifying and updating the CCW requirements in the administrative Rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.