

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 ~~individual~~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. ~~Wavie~~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 ~~a~~their direct support worker unless ~~that~~the direct support worker is related ~~by blood or marriage~~ 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, ~~respiratory 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 ~~person's~~ 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. respiratory therapy services which provide preventative and maintenance of airway-related techniques and procedures including:~~

~~_____ a. application of medical gases, humidity and aerosols;~~

~~_____ b. intermittent positive pressure;~~

~~_____ c. continuous artificial ventilation;~~

~~_____ d. administration of drugs through inhalation and related airway management;~~

~~_____ e. individual care;~~

~~_____ f. instruction administered to the waiver participant and informal supports; and~~

~~g. periodic management of ventilation equipment for participants whose ventilation care is performed by informal caregivers.~~ 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. ~~Unit of 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

~~A. The minimum hourly rate paid to direct support professionals shall be at least the current federal minimum~~
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