

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Children's Choice Waiver

(LAC 50:XXI.11105, 11301, 11303, 11501, 11529, 12101, and 12301)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.11105, §11301, §11303, §11501, §11529, §12101, and §12301 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 for Citizens with Developmental Disabilities propose to amend the provisions governing delivery of services in the Children's Choice Waiver in order to include family members as paid caregivers and shared services under certain conditions.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI Home and Community-Based Services Waivers
Subpart 9. Children's Choice Waiver

Chapter 111. General Provisions

§11105. Money Follows the Person Rebalancing Demonstration

A. - A.1. ...

B. Individuals must meet the following criteria for participation in the MFP Rebalancing demonstration.

1. Individuals with a developmental disability must:

a. ...

b. occupy a licensed, approved and enrolled Medicaid nursing facility bed for at least ~~six months~~ 60 days or have been hospitalized in an acute care hospital for ~~six months~~ 60 days with referral for nursing facility placement; and

B.1.c. - E. ...

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 for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2524 (December 2017), amended by the Department of Health, Bureau of Health Services Financing, and the Office for the Citizens with Developmental Disabilities, LR 48:

Chapter 113. Service

§11301. Service Cap

A. - D. ...

E. Children's choice services are capped at \$20,200 per individual per plan of care year.

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 26:2793 (December 2000), amended LR 28:1787 (August 2002), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:2157 (July 2011), LR 39:507 (March 2013), LR 39:2498 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

§11303. Service Definitions

A. - D.6. ...

7. Excluded are those adaptations or improvements to the home or vehicle, which are of general utility, and are not of direct medical or remedial benefit to the participant, such

as carpeting, roof repair, central air conditioning, whole home generators, a fence, etc.

D.8. - E.2. ...

3. For purposes of this service only, "family" is defined as ~~unpaid~~ persons who live with or provide care to a participant in the children's choice waiver and may include a parent, spouse, stepparent, grandparent, child, and sibling, relative, foster family, legal guardian, or in-law

E.4. - F.1.b. ...

2. Family members who provide family support services must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant. ~~Services cannot be provided by the following individuals:~~ Service hours shall be capped at 40 hours per week, Sunday to Saturday, for services delivered by family members living in the home.

~~a. legally responsible relatives (spouses, parents or step parents, foster parents, or legal guardians); or~~
~~b. any other individuals who live in the same household with the waiver participant.~~ a. - b. Repealed.

3. Legally responsible individuals (such as a parent or spouse) and legal guardians may provide family support services for their own child, provided that the care is extraordinary in comparison to that of a child of the same age

without a disability and the care is in the best interest of the child. Legally responsible individuals and legal guardians may not provide family support services delivered through self-direction.

G. - N.4.a. ...

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 26:2793 (December 2000), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), 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 39:2498 (September 2013), LR 40:67 (January 2014), LR 41:126 (January 2015), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2525 (December 2017), LR 48:

Chapter 115. Provider Participation Requirements

Subchapter A. Provider Qualifications

§11501. Support Coordination Providers and Service Providers

A. - B. ...

1. Family members who provide family support services must meet the same standards of service, training requirements, and documentation requirements, as caregivers who are unrelated to the participant. ~~Service cannot be provided by the following:~~

~~a. legally responsible relatives (spouses, parents or step-parents, foster parents, or legal guardians); or~~
~~b. any other individuals who live in the same household with the waiver participant.~~ a. - b. Repealed.

2. Legally responsible individuals (such as a parent or spouse) and legal guardians who provide family support services for their own child must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant. Monitoring shall be conducted to ensure proper documentation and that the services are delivered in accordance with the child's plan of care. Payments to legally responsible individuals, legal guardians and family members living in the home shall be audited on a semi-annual basis to ensure payment for services rendered.

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 26:2793 (December 2000), repromulgated

for LAC, LR 28:1984 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

§11529. Professional Services Providers

A. - G. ...

H. Providers of professional services must maintain adequate documentation to support service delivery and compliance with the approved plan of care and provide said documentation upon the ~~DHH's~~[LDH's](#) request.

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 for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), amended LR 41:128 (January 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

Chapter 121. Reimbursement Methodology

§12101. Unit of Reimbursement

A. - B.1. ...

a. Up to two participants may choose to share family support services if they share a common provider of this service. Family support services may share a direct support worker (DSW) across two waivers: the Residential Options Waiver (community living supports) and/or New Opportunities Waiver (individual and family supports). However, sharing a DSW at the same time across all three waivers is not allowed.

1.b. - 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.~~ 4. - 4.a. Repealed.

5. - 5.d.i. ...

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 42:896 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:40 (January 2022), LR 48:

Chapter 123. Self-Direction Initiative

§12301. Self-Direction Service Delivery Option

A. ...

B. Participant Responsibilities. Waiver participants choosing the self-directed service delivery option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is under 18 years of age or is unable to make decisions independently, the participant must have an authorized representative who understands the rights, risks and responsibilities of managing his/her care and supports within the participant's individual budget. The employer must be at least 18 years of age. Responsibilities of the participant or authorized representative include:

1. - 3.b. ...

4. all services rendered shall be prior approved and in accordance with the plan of care; ~~and~~

5. all services must be documented in service notes, which describes the services rendered and progress towards the participant's personal outcomes plan of care-; and

6. authorized representatives may be the employer of the self-directed option, but may not also be the employee.

C. - C.1.d.iv. ...

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, Office for Citizens with Developmental Disabilities, LR 39:2504 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2527 (December 2017), LR 48:

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 a positive impact on family functioning,

stability and autonomy as described in R.S. 49:972 as it allows family members to act as caregivers.

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 positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it allows family members to act as caregivers.

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, as described in R.S. 49:978.1 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 Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2022.

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 April 11, 2022. 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 April 28, 2022 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 April 11, 2022. 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