

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Adult Day Health Care Waiver
(LAC 50:XXI.2101,2103,2301,2703,2901, and 2903)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.2101, §2102, §2301, §2703 and §2901 and adopt §2903 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 promulgated an Emergency Rule which amended the provisions governing the Adult Day Health Care Waiver to add health status monitoring, home delivered meals, activity and sensor monitoring and personal emergency response systems as waiver services throughout the duration of the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) (*Louisiana Register*, Volume 46, Number 9). The department promulgated an Emergency Rule temporarily extending these services beyond the May 11, 2023

COVID-19 PHE end date as allowed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) (*Louisiana Register*, Volume 49, Number 5). The department subsequently received CMS approval to make these services available permanently under the ADHC waiver and promulgated an Emergency Rule which amended the May 12, 2023 Emergency Rule to extend these services beyond the original November 11, 2023 CMS extension date in order to allow sufficient time for them to be permanently incorporated into the *Louisiana Administrative Code* (*Louisiana Register*, Volume 49, Number 11). This proposed Rule is being promulgated to continue the provisions of the November 09, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 3. Adult Day Health Care Waiver

Chapter 21. General Provisions

§2101. Introduction

A. - D.2.b. ...

3. No individual, unless granted an exception by OAAS, may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based service programs including:

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

b. - 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 Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997), repromulgated LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2161 (October 2008), repromulgated LR 34:2565 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2494 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:2162 (December 2018), LR 50:

§2103. Program Description

A. ...

B. The target population for the ADHC Waiver Program includes individuals who:

1. ...

2. are 22 to 64 years old and with a physical disability; and

3. ...

C. The long-range goal for all adult day health care participants is the delay or prevention of long-term care facility placement. The more immediate goals of the Adult Day Health Care Waiver are to:

1. - 2. ...

3. restore and rehabilitate the individual to the highest possible level of functioning as may be practicable under the circumstances;

4. - 6. ...

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 Human Resources, Office of Family Security, LR 8:145 (March 1982), amended LR 11:623 (June 1985), repromulgated LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, LR 14:793 (November 1988), amended by the Bureau of Health Services Financing, LR 23:1149 (September 1997), repromulgated LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2161 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2624 (September 2011), LR

39:2495 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 50:

Chapter 23. Services

§2301. Covered Services

A. – A.4.b. ...

c. These services do not include monthly rental charges, mortgage expenses, food, recurring monthly utilities charges, and household appliances, and/or items intended for purely diversional/recreational purposes.

A.4.d. – A.5.b.iii. ...

6. ADHC Health Status Monitoring (HSM). This service monitors the status of participants that are unable to attend the ADHC on their scheduled day as outlined in the approved plan of care.

a. The ADHC provider may utilize this service and contact the participant via telephone to check in on the participant and provide follow-up on any need identified during the telephone contact.

7. Home Delivered Meals (HDMs). These services assist in meeting the nutritional needs of a participant in support of the maintenance of self-sufficiency and enhancing the quality of life.

a. Up to two nutritionally balanced meals per day may be delivered to the home of an eligible participant who is unable to prepare their own meals, and/or has no responsible caregiver in the home on days that the participant is not scheduled to attend the ADHC center.

b. Each meal shall provide a minimum of one-third of the current recommended dietary allowance (RDA) for the participant as adopted by the United States Department of Agriculture. The provision of HDMS does not provide a full nutritional regimen.

8. Activity and Sensor Monitoring (ASM). This is a computerized system that monitors the participant's in-home movement and activity for health, welfare, and safety purposes.

a. The provider agency is responsible for monitoring electronically-generated information, for responding as needed, and for equipment maintenance.

b. ASM must meet applicable manufacturing, design and installation standards.

c. ASM must be prior authorized and no experimental items shall be authorized.

9. Personal Emergency Response System (PERS). This is an electronic device which enables participants to secure help in an emergency. PERS is appropriate for participants who

are cognitively and/or physically able to operate the system and who are alone for significant periods of time.

a. PERS must meet applicable manufacturing, design, and installation standards.

b. PERS must be prior authorized and no experimental items shall be authorized.

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 Human Resources, Office of Family Security, LR 11:623 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997), amended LR 25:1100 (June 1999), repromulgated LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011), LR 39:2495 (September 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 44:2163 (December 2018), LR 49:486 (March 2023), LR 50:

Chapter 27. Provider Responsibilities

§2703. Reporting Requirements

A. - B. ...

C. Support coordinators shall provide the participant's approved POC to the ~~ADHC provider~~providers listed on the POC in a timely manner.

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, Office of the Secretary, Office of Aging and Adult Services, LR 34:2164 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2497 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:2165 (December 2018), LR 50:

Chapter 29. Reimbursement

§2901. ~~Adult Day Health Care (ADHC) Direct Support Worker Wages, Other Benefits,~~Reimbursement and ~~Workforce Retention Bonus Payments~~Rate Requirements

A. ~~Establishment of ADHC Direct Support Worker Wage Floor and Other Benefits~~Adult day health care services shall be reimbursed according to LAC 50:XXI.709.

~~1. ADHC providers that were providing ADHC services on or after October 1, 2021 and employing ADHC direct support workers will receive a rate increase. The ADHC reimbursement rates shall be rebased resulting in an average increase of \$4.31 per hour (rates differ based on facility specific transportation rate).~~

~~2. For direct support workers employed at the ADHC centers on or after October 1, 2021, 70 percent of the ADHC provider rate increases shall be passed directly to the ADHC direct support workers in the form of a minimum wage floor of \$9 per hour and in other wage and non wage benefits.~~

~~3. All ADHC providers affected by this rate increase shall be subject to passing 70 percent of their rate increases directly to the ADHC direct support worker in various forms. These forms include a minimum wage floor of \$9 per hour and wage and non wage benefits. This wage floor and wage and non wage benefits are effective for all affected ADHC direct support workers of any working status, whether full time or part time.~~

~~4. The ADHC provider rate increases, wage floor, and/or wage and non wage benefits will end March 31, 2025 or when the state's funding authorized under section 9817 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-002) is exhausted.~~

~~5. The Department of Health (LDH) reserves the right to adjust the ADHC direct support worker wage floor and/or wage and non-wage benefits as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.~~1.

- 5. Repealed.

B. ~~Establishment~~The following services shall be reimbursed at the authorized rate or approved amount of Direct Support Worker Workforce Bonus Payments~~the installation, device/equipment, and when the service has been prior approved by the plan of care:~~

1. ~~ADHC providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each ADHC direct support worker that worked with participants for those months.~~home delivered meals (not to exceed the maximum limit set by OAAS);

2. ~~The ADHC direct support 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 ADHC direct support workers of any working status, whether full-time or part-time.~~activity and sensor monitoring;

3. transition services (not to exceed the maximum lifetime limit set by OAAS);

4. personal emergency response system; and

5. assistive technology.

C. ~~Audit Procedures for ADHC Direct Support Worker Wage Floor, Other Benefits, and Workforce Bonus Payments~~health status monitoring services shall be reimbursed as a per diem rate.

~~1. The wage enhancements, wage and non-wage benefits and bonus payments reimbursed to ADHC providers shall be subject to audit by LDH.~~

~~2. ADHC providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the ADHC direct support worker wage floor, wage and non-wage benefits and/or bonus payments.~~

~~3. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, copies of unemployment insurance files, etc.~~

~~4. ADHC providers shall produce the requested documentation upon request and within the timeframe provided by LDH.~~

~~5. Non compliance or failure to demonstrate that the wage enhancement, wage and non-wage benefits and bonus payments were paid directly to ADHC direct support workers may result in the following:~~

~~a. sanctions; or~~

~~b. disenrollment from the Medicaid Program.~~1. -

5.b. Repealed.

D. ~~Sanctions for ADHC Direct Support Worker Wage Floor, Other Benefits and Workforce Bonus Payments~~The following services shall be reimbursed at an established monthly rate:

1. ~~The ADHC provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend on the following factors:~~support coordination;

a. ~~failure to pass 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;~~

b. ~~the number of employees identified that the ADHC provider has not passed 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;~~

c. ~~the persistent failure to not pass 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments; or~~

~~d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.~~ a. - d. Repealed.

2. transition intensive support coordination; and
3. monthly monitoring/maintenance for PERS and/or ASM services.

E. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the POC and release of prior authorization for the services.

F. 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 49:683 (April 2023), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 50:

§2903. Adult Day Health Care (ADHC) Direct Support Worker Wages, Other Benefits, and Workforce Retention Bonus Payments
[Formerly LAC 50:XXI.2901]

A. Establishment of ADHC Direct Support Worker Wage Floor and Other Benefits

1. ADHC providers that were providing ADHC services on or after October 1, 2021 and employing ADHC direct support workers will receive a rate increase. The ADHC reimbursement rates shall be rebased resulting in an average increase of \$4.31 per hour (rates differ based on facility specific transportation rate).

2. For direct support workers employed at the ADHC centers on or after October 1, 2021, 70 percent of the ADHC provider rate increases shall be passed directly to the ADHC direct support workers in the form of a minimum wage floor of \$9 per hour and in other wage and non-wage benefits.

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

4. The ADHC provider rate increases, wage floor, and/or wage and non-wage benefits will end March 31, 2025 or when the state's funding authorized under section 9817 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-002) is exhausted.

5. The Department of Health (LDH) reserves the right to adjust the ADHC direct support worker wage floor and/or wage and non-wage benefits as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

B. Establishment of Direct Support Worker Workforce Bonus Payments

1. ADHC providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each ADHC direct support worker that worked with participants for those months.

2. The ADHC direct support 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 ADHC direct support workers of any working status, whether full-time or part-time.

C. Audit Procedures for ADHC Direct Support Worker Wage Floor, Other Benefits, and Workforce Bonus Payments

1. The wage enhancements, wage and non-wage benefits and bonus payments reimbursed to ADHC providers shall be subject to audit by LDH.

2. ADHC providers shall provide to LDH or its representative all requested documentation to verify that they

are in compliance with the ADHC direct support worker wage floor, wage and non-wage benefits and/or bonus payments.

3. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, copies of unemployment insurance files, etc.

4. ADHC providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

5. Non-compliance or failure to demonstrate that the wage enhancement, wage and non-wage benefits and bonus payments were paid directly to ADHC direct support workers may result in the following:

a. sanctions; or

b. disenrollment from the Medicaid Program.

D. Sanctions for ADHC Direct Support Worker Wage Floor, Other Benefits and Workforce Bonus Payments

1. The ADHC provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend on the following factors:

a. failure to pass 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of \$9 per hour and in

other wage and non-wage benefits and/or the \$250 monthly bonus payments;

b. the number of employees identified that the ADHC provider has not passed 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;

c. the persistent failure to not pass 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments; or

d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

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 50:

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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, as it provides additional services to meet the needs of ADHC Waiver participants.

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 may 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 provides additional services to meet the needs of ADHC Waiver participants.

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 may have a positive impact on small businesses, since it expands the

services ADHC providers can provide to waiver participants when they are not at the center and be reimbursed by Medicaid.

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, but may have a positive impact on the provider's ability to provide the same level of service as described in HCR 170, since it expands the services ADHC providers can provide to waiver participants when they are not at the center and be reimbursed by Medicaid.

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 January 2, 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 11, 2023. 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 28, 2023 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 11, 2023. 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.

Stephen R. Russo, JD

Secretary