

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Residential Options Waiver
Direct Support Worker Wages
(LAC 50:XXI.16903)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.16903 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.

Act 119 of the 2021 Regular Session of the Louisiana Legislature provided additional funding to the Department of Health for providers of home and community-based services waivers to increase the wages of direct support workers and personal care attendants, pursuant to rulemaking and audit. House Concurrent Resolution 127 (HCR 127) of the 2021 Regular Session of the Louisiana Legislature directed the department to make adjustments in the state Medicaid budget for the purpose of allocating funding more equitably to providers throughout the disabilities services system. In compliance with Act 119 and HCR 127, the Department of Health, Bureau of Health Services

Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the Residential Options Waiver in order to establish a wage floor for direct support workers along with audit procedures, sanctions and penalties (*Louisiana Register*, Volume 47, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 1, 2021 Emergency Rule.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 13. Residential Options Waiver

Chapter 169. Reimbursement

§16903. Direct Support Professional Wages

A. ~~The minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect at the time.~~ Establishment of Direct Support Worker Wage Floor for Medicaid Home and Community Based Services for Intellectual and Developmental Disabilities

1. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing defined direct support workers will receive the equivalent of a \$2.50 per hour rate increase.

2. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct support workers with an effective date of service for the identified home and community based waiver services provided beginning October 1, 2021.

3. The minimum hourly wage floor paid to direct support workers shall be \$9.00 per hour.

4. All providers of services affected by this rate increase shall be subject to a direct support worker wage floor of \$9.00 per hour. This wage floor is effective for all affected direct support workers of any work status (full-time, part-time, etc.)

5. The Department of Health reserves the right to adjust the direct support worker wage floor as needed through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

B. Establishment of Audit Procedures for Direct Support Worker Wage Floor

1. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

2. Providers shall provide to the department or its representative all requested documentation to verify compliance with the direct support worker wage floor.

3. This documentation may include, but not be limited to, payroll records, wage and salary sheets, check stubs, etc.

4. Providers shall produce the requested documentation upon request and within the time frame provided by the department.

5. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support workers may result in:

a. sanctions; or

b. disenrollment in the Medicaid Program.

C. Sanctions

1. The 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:

a. failure to pay I/DD HCBS direct support workers the floor minimum of \$9.00 per hour;

b. the number of employees identified as having been paid less than the \$9.00 per hour floor;

c. the persistent failure to pay the floor minimum of \$9.00 per hour; or

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

D. New Opportunities Waiver Fund

1. The department shall deposit civil fines and the interest collected from providers into the New Opportunities Waiver Fund.

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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2169 (October 2015), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities 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, since the wage floor will ensure that direct support workers are providing care and support to families.

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 assures access to direct support worker services for ROW recipients.

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 may have a positive impact on small businesses, as described in R.S. 49:965.2 et seq, as it will increase rates paid to providers for direct support worker services.

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, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule permits Medicaid reimbursement at a higher rate for the services of direct support workers.

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 November 29, 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 November 9, 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 November 29, 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 November 9, 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