

NOTICE OF INTENT

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

**Home and Community-Based Waivers
Children's Choice Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.12101)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.12101 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing Children's Choice Waiver services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan.

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 Children's Choice Waiver in order to establish workforce retention bonus payments for direct service workers and support coordination providers

along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated to continue the provisions of the July 31, 2022 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice Waiver

Chapter 121. Reimbursement Methodology

§12101. Unit of Reimbursement

A. ...

1. Establishment of Support Coordination Workforce Retention Bonus Payments

a. Support coordination providers providing services on or after April 1, 2021 shall receive bonus payments of \$150 per month for each support coordination worker that worked with participants for that month. These payments will remain in effect for each month thereafter that the support coordination worker works with participants and is still employed with that agency.

b. The support coordination worker that worked with participants on or after April 1, 2021 must receive at least \$125 of this \$150 bonus payment paid to the provider. This bonus payment is effective for all affected support coordination workers of any working status, whether full-time or part-time.

c. Bonus payments 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.

d. LDH reserves the right to adjust the amount of the bonus payments paid to the support coordination workers as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

2. Audit Procedures for Support Coordination Workforce Retention Bonus Payments

a. The bonus payments reimbursed to support coordination providers shall be subject to audit by LDH.

b. Support coordination providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the support coordination bonus payments.

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

d. Support coordination providers shall produce the requested documentation upon request and within the time frame provided by LDH.

e. Noncompliance or failure to demonstrate that the bonus payments were paid directly to support coordination workers may result in the following:

i. sanctions; or

ii. disenrollment from the Medicaid Program.

3. Sanctions for Support Coordination Workforce Retention Bonus Payments

a. The support coordination 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 upon the following factors:

i. failure to pay support coordination workers the \$125 monthly bonus payments;

ii. the number of employees identified as having been paid less than the \$125 monthly workforce retention bonus payments;

iii. the persistent failure to pay the \$125 monthly bonus payments; or

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

B. - B.3. ...

4. Direct ~~Support~~-Service Worker Wages and Workforce Retention Bonus Payments

a. Establishment of Direct ~~Support~~-Service Worker Wage Floor for Medicaid Home and Community-Based Services for Intellectual and Developmental Disabilities

i. 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~~-service workers will receive the equivalent of a \$2.50 per hour rate increase.

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

iii. The minimum hourly wage floor paid to direct ~~support~~-service workers shall be \$~~9.00~~9 per hour.

iv. All providers of services affected by this rate increase shall be subject to a direct ~~support~~-service worker wage floor of \$~~9.00~~9 per hour. This wage floor is effective for all affected direct ~~support~~-service workers of any work status, whether ~~(full-time, or part-time, etc.)~~.

v. The Department of Health reserves the right to adjust the direct ~~support~~-service worker wage floor as

needed through appropriate rulemaking promulgation consistent with the ~~Louisiana~~ Administrative Procedure Act.

b. Establishment of ~~Audit Procedures for~~ Direct ~~Support Service~~ Worker ~~Wage Floor~~ Workforce Retention Bonus Payments.

i. ~~The wage enhancement~~ Providers providing services on or after April 1, 2021 shall receive bonus payments ~~reimbursed to providers shall be subject to audit by the department~~ of \$150 per month for each direct service worker that worked with participants for that month. These payments will remain in effect for each month thereafter that the direct service worker works with participants and is still employed with that agency.

ii. ~~Providers shall provide to the department or its representative all requested documentation to verify compliance with the~~ The direct support service worker ~~wage floor~~ providing services on or after April 1, 2021 that worked with participants must receive at least \$125 of this \$150 bonus payment paid to providers. This bonus payment is effective for all affected direct service workers of any working status, whether full-time or part-time.

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

iv. ~~Providers shall produce~~ LDH reserves the ~~requested documentation upon request and within~~ right to adjust the ~~time frame provided by the department~~ amount of the bonus payments paid to the direct service worker as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

~~v. 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.~~ v. - v.(b). Repealed.

c. Sanctions Audit Procedures for Direct Service Worker Wage Floor and Workforce Retention Bonus Payments

i. The wage enhancement and bonus payments reimbursed ~~provider will be subject to~~ providers shall be subject ~~sanctions or penalties for failure to~~ audit by LDH. ~~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. (a). - (d).~~

Repealed.

_____ ii. Providers shall provide to the LDH or
its representative all requested documentation to verify that
they are in compliance with the direct service wage floor and
bonus payments.

_____ iii. This documentation may include, but is
not limited to, payroll records, wage and salary sheets, check
stubs, etc.

_____ iv. Providers shall produce the requested
documentation upon request and within the timeframe provided by
the LDH.

_____ v. Non-compliance or failure to
demonstrate that the wage enhancement and/or bonus payments were
paid directly to the direct service workers may result in the
following:

_____ (a). sanctions; or

(b). disenrollment from the Medicaid Program.

d. ~~New Opportunities Waiver Fund~~Sanctions for Direct Service Worker Wage Floor and Workforce Retention Bonus Payments

i. ~~The department shall deposit civil fines and the interest collected from providers into the New Opportunities Waiver Fund.~~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 upon the following factors:

(a). failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour and/or the \$125 monthly bonus payments;

(b). the number of employees identified as having been paid less than the floor minimum of \$9 per hour and/or the \$125 monthly bonus;

(c). the persistent failure to pay the floor minimum go \$9 per hour and/or the \$125 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 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 48:1544 (June 2022), 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 by ensuring continued provider participation in the Medicaid Program.

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 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 a positive impact on small businesses.

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 increases payments to providers for the services they already render.

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 October 31, 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 October 10, 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 October 27, 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 October 10, 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