

NOTICE OF INTENT

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

**Home and Community-Based Services Waivers
New Opportunities Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.14301)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.14301 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 New Opportunities Waiver (NOW) 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 New Opportunities Waiver in order to establish workforce retention bonus payments

for direct service workers 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 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Unit of Reimbursement

A. - E. ...

F. Direct ~~Support~~Service Worker Wages and Bonus Payments

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

a. 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.

b. 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.

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

d. 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.

e. 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.

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

a. ~~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.

b. ~~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 the provider. This bonus payment is effective
for all affected direct service workers of any working status,
whether full-time or part-time.

c. ~~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.

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

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

~~i. sanctions; and~~

~~ii. disenrollment in the Medicaid Program~~

e. - e.ii. Repealed.

3. ~~Sanctions~~ Audit Procedures for Direct Service

Worker Wage Floor and Workforce Retention Bonus Payments

a. ~~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:~~ wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

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

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

~~iii. the persistent failure to pay the floor minimum of \$9.00 per hour.~~

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

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

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

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

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

i. sanctions; or

ii. disenrollment from the Medicaid Program.

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

a. 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:

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

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

iii. the persistent failure to pay the floor
minimum of \$9 per hour and/or 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.

G. ...

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 Community
Supports and Services, LR 30:1209 (June 2004), amended by the
Department of Health and Hospitals, Office for Citizens with
Developmental Disabilities, LR 34:252 (February 2008), amended
by the Department of Health and Hospitals, Bureau of Health
Services Financing and the Office for Citizens with
Developmental Disabilities, LR 35:1851 (September 2009), LR
36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April
2013), LR 40:80 (January 2014), LR 42:898 (June 2016), amended
by the Department of Health, Bureau of Health Services Financing
and the Office for Citizens with Developmental Disabilities, LR
44:58 (January 2018), LR 45:44 (January 2019), LR 46:1682
(December 2020), LR 48:41 (January 2022), LR 48:1558 (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