

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Supports Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.6101)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.6101 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 Supports 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 Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the Supports 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 in order 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 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Unit of Reimbursement

A. - G. ...

H. 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 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 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 (LDH) reserves the right to adjust the direct ~~support~~service worker wage floor as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

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

a. ~~The wage enhancement payments reimbursed to providers~~Providers providing services on or after April 1, 2021 shall ~~be subject to audit by the department~~receive bonus payments 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. 117-002) is exhausted.

d. ~~Providers shall produce the requested documentation upon request and within the time frame provided by the department~~LDH reserves the right to adjust the amount of the 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; or~~

~~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~~ wage enhancement and bonus payments reimbursed to providers shall be subject to ~~sanctions or penalties for failure to comply with this Rule or with requests issued~~ audit by LDH ~~pursuant to this Rule. The severity of such action will depend on:~~.

~~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;~~

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

~~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 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 payment were paid directly to direct service workers may result in the following:

- 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 failures to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such an 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.

I. ...

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 timeframe 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 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.

J. ...

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 for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), LR 37:2158 (July 2011), LR 39:1050 (April 2013), LR 40:82 (January 2014), LR 40:2587 (December 2014), 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 48:43 (January 2022), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:43(January 2022), LR 48:1579 (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 no 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