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

Public Hearing-Substantive Changes to Proposed Rule
Home and Community-Based Services Waivers
Community Choices Waiver
Direct Support/Service Worker Wages and Bonus Payments
(LAC 50:XXI.Chapter 95)

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 published a Notice of Intent in the September 20, 2022 edition of the *Louisiana Register* (LR 48:2421-2423) to adopt LAC 50:XXI.Chapter 95 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Notice of Intent proposed to continue the provisions of the July 31, 2022 Emergency Rule which adopted the provisions governing reimbursement in the Community Choices Waiver in order to establish workforce bonus payments for direct support/service workers and personal assistance service providers along with audit procedures and sanctions. Upon further discussion with various stakeholders, the department has determined that revisions are necessary to the provisions governing the bonus payments approved by the U.S. Department of Health and Human

Services, Centers for Medicare and Medicaid Services (CMS) under section 9817 of the American Rescue Plan Act of 2021.

Taken together, all of these revisions will closely align the proposed Rule with the department's original intent and the concerns brought forth during subsequent discussions with stakeholders relative to the Notice of Intent as originally published.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 95. Reimbursement

§9503. Direct Support/Service Worker Wages, Other Benefits, and Workforce Bonus Payments

A. - A.6. ...

B. Establishment of Direct Support/Service Worker Workforce Bonus Payments

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

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

3. - 4. Repealed

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

1. - 5.b. ...

D. Sanctions for Direct Support/Service Worker Wages, Other Benefits, and Workforce Payments

1. Providers 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 PAS and ADHC provider rate increases directly to the direct support/service 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 PAS and ADHC provider has not passed 70 percent of the provider rate increases directly to the direct support/service 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 PAS and ADHC provider rate increases directly to

the direct support/service 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. ...

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:

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.

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 these substantive changes to the proposed Rule. A public hearing on the substantive changes to the proposed Rule is scheduled for Tuesday, February 28, 2023 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or

arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m., March 1, 2023.

Dr. Courtney N. Phillips

Secretary