

Report: ACT 381 of the 2019 Regular Session

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Disability Services Sustainability Act 2021 Annual Report

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Executive Summary

The Louisiana Department of Health (LDH or “the Department”) submits the enclosed annual report regarding the collaborative effort to study and evaluate the access to quality services for individuals with developmental, intellectual, adult-onset, or physical disabilities. This report is submitted to the House Committee on Appropriations, the Senate Committee on Finance and the legislative committees on health and welfare in response to House Bill 390 of the 2019 Regular Legislative Session, by Representative Malinda White, which was signed into law by Governor John Bel Edwards on June 20, 2019, becoming Act No. 381 with an effective date of August 1, 2019. Act 381, also known as the Disability Services Sustainability Act regards Medicaid-funded disability services and provides for annual reporting concerning such services.

Specifically, Act 381 requires LDH to submit an annual report concerning disability service provider rates as detailed below:

- Any changes within the previous 12 months to the Medicaid rate methodology for disability services and the current Medicaid rates for those services,
- The date of the last rebasing of Medicaid rates for intermediate care facilities for people with developmental disabilities and any future dates on which those rates are due to be rebased,
- The amount of funding that would be required for an annual adjustment, based on the inflation index, to Medicaid rates for disability services,
- The health market basket inflation index used in calculating the amount of funding that would be needed for an annual adjustment of Medicaid rates for disability services,
- Any proposed changes to the methodology for determining Medicaid rates for disability services.

As with previous studies, the Department has always valued the role of providers in our service delivery system and has continued to work in tandem to identify viable solutions to not only address the concerns regarding quality service and supports but many others as well. The next few paragraphs indicate the specific commitments from *Together: Building a Stronger LDH and a Healthier Louisiana*, the LDH business plan for state fiscal year 2022 that addresses service delivery for vulnerable residents and Medicaid rate review.

The Department has prioritized persons with disabilities in the LDH Business Plan. Looking at Initiative 6: Increase and Strengthen Service Delivery for Vulnerable Residents, Goal 2, the Department is working to improve workforce capacity and competency for home and community-based services (HCBS) long-term supports and services by reducing turnover rate of direct support professionals by 2.5% in a one-year period and increasing the number of new direct support professionals by 5% in a one-year period. The Department is committed to addressing these issues and establishing a methodology for ensuring that provider rates address the need for recruitment and retention strategies, including establishment of a realistic wage floor for direct support workers.

Also as part of the LDH Business Plan under Initiative 14, LDH seeks to develop and implement a Medicaid rate review in which provider rates will be reviewed and compared against current provider rates, the southern average, the national average, Medicare rates, and commercial rates (if available). These rate reviews will include all provider types on a staggered three-year cycle. The Department understands that sufficient rates can be a barrier to providers deciding to accept Medicaid, and the Department is

committed to working in concert with the Administration and the legislature to develop a collaborative process that accounts for changes in access, cost of care, actuarial soundness, and utilization across Medicaid services and providers.

To proactively address reimbursement rate concerns, Medicaid will issue an annual rate review report to the Governor, legislature, and stakeholders. These reports will help LDH and legislators make informed policy and appropriations decisions when considering provider rate adjustments. This information should assist in providing equity across provider types and result in an objective rate adjustment process.

With the above referenced initiatives outlined, the Department will build on the foundations while seeking to being open to change and accountability to our stakeholders. For purposes of this report, we will specifically examine the five issues outlined above as required by Act 381.

Section 1 - Background

The issue with regard to sustainability of disability services has continued to be the subject of many pieces of legislation over the past few years, specifically SR 6 of 2016, HR 205 of 2017, HR 211 of 2017, HB 204 of 2021, and HCR 127 of 2021 Regular Legislative Sessions, respectively.

Subsection 1.1 – Definitions/Services:

The Centers for Medicare & Medicaid Services (CMS) defines “personal care” as non-skilled personal care, such as help with activities of daily living including bathing, dressing, eating, getting in and out of bed or chairs, moving around, and using the bathroom. For purposes of this report, in-home services are understood to mean those services licensed in Louisiana under the personal care attendant (PCA) module of HCBS license.

The Office for Citizens with Developmental Disabilities (OCDD) offers community-based services and supports for people with intellectual/developmental disabilities through Medicaid home and community-based waiver services. These waiver programs allow Louisiana citizens to have greater flexibility to choose where they want to live as well as the waiver services and supports that best suit their needs, while still receiving Medicaid State Plan benefits. OCDD programs include four HCBS waivers: the New Opportunities Waiver (NOW), Children’s Choice Waiver (CCW), Residential Options Waiver (ROW), and the Supports Waiver.

Services provided by intermediate care facilities (ICFs) for individuals with intellectual disabilities (ICF/IID) are designed for those individuals diagnosed as having developmental lags that are considered amendable to active treatment in a 24-hour managed care environment where the individual will achieve maximum growth. Individuals are admitted to an ICF/IID after it has been determined by an interdisciplinary professional team that admission is the best available plan.

The Office of Aging and Adult Services (OAAS) offers community-based services and supports for people who are elderly or have adult onset disabilities through Medicaid HCBS. These waiver programs provide

supports and services to assist Louisiana citizens to remain living in their home. OAAS also oversees the state plan service, Long Term-Personal Care Services (LT-PCS), which provides personal care services to adults with Medicaid who meet the medical criteria for this service. Additional OAAS programs include the Community Choices Waiver (OAAS-CCW), Adult Day Health Care (ADHC) Waiver, and the Program for All Inclusive Care for the Elderly (PACE).

Medicaid State Plan services are provided to eligible persons under the following Medicaid programs: Early and Periodic, Screening, Diagnosis, and Treatment – Personal Care Services (EPSDT-PCS), EPSDT-Case Management, Pediatric Day Health Care, Extended Home Health, and ICFs.

Louisiana’s Medicaid PCA services are financed through a combination of state general fund appropriations and federal matching funds provided through CMS’s federal financial participation. Unlike other Medicaid services such as nursing homes and intermediate care facilities, PCA services currently have no other funding sources or mechanisms available.

Subsection 1.2 – History of LDH Actions in Response to Legislative Requests

In 2019, the funding was included in HB 105 and HB 392 to provide for both restoration and rebasing of rates as explained below:

Rate Restoration: Beginning in 2008, rates for HCBS waiver and state plan home-based services provided by licensed PCA providers were reduced over time. HB 392 addressed this issue and restored rates for these services to 2008 levels.

Rate Rebase: The last rate rebase for group homes and ICF/IID facilities, occurred in 2007. This rate rebase also applies to ADHC facilities for adults and people who are aging, which had not been rebased since SFY 2013.

HB 392/ACT 50 of 2019 Regular Legislative Session (supplemental appropriation for Fiscal Year 2019)

- Included funding of the rates for developmental disability home and community-based waiver services, which allowed LDH to increase rates for January 2019 through June 2019.
- Included full funding of the rates for waiver services for qualifying aging adults and for long-term personal care services (LT-PCS & Community Choices Waiver) that were provided for the six-month period of January 2019 through June 2019.
- Included funding for rebasing rates for ADHC.
- Included language, but not funding, that allows the Department to increase rates for ICF/IID facilities.

HB 105/ACT 10 of the 2019 Regular Legislative Session (appropriations for Fiscal Year 2020) – provided funding for the following services:

- ICF/IID facilities
- Services provided under Medicaid’s EPSDT program
- HCBS waiver services
- State Plan LT-PCS, including services for people with disabilities or who are aging
- ADHC

The Appropriations bill also required the Department, subject to CMS approval, to establish a rate schedule for providers of home and community-based services. This rate schedule must allow for increased wages for direct support workers who provide such home and community based services.

HB 1 and HCR 127 of 2021 Regular Legislative Session (Appropriations for Fiscal Year 2021) – provided one-time funding from the New Opportunities Waiver Fund for the following:

- Direct service (DSW worker wages
- 10/1/2021 per unit rate increase implemented
- Amount of the increase depended on the unit of service and ratio of direct support worker to recipients.
- Equates to \$2.50 per hour rate increase for providers. Providers are expected to utilize the rate increase to increase wages to direct support workers.
- The new base minimum hourly compensation for any direct service worker providing care to any recipient of HCBS Waiver services is \$9.00 before the application of taxes and benefits.

HB390/ACT 381 of the 2019 Regular Legislative Session

House Bill 390/Act 381 of the 2019 Regular Legislative Session declared that reliable and sufficient Medicaid reimbursement rates for private providers are necessary to create and maintain a sustainable statewide system of services for eligible individuals with disabilities. The Act further declared that this statewide system of services is only sustainable if reimbursement rates are sufficient to enlist enough providers to allow an individual a choice among different providers who are capable of delivering quality services.

In 2020, during the COVID-19 Public Health Emergency, there were multiple provider requests submitted to LDH across all provider types. Special accommodations and flexibilities were granted for HCBS waiver and IC/IID recipients and providers, and flexibilities were enacted through Medicaid authorities. Our focus was ensuring the continuity of care and allowing as much funding to flow to these providers within the existing state appropriation as possible given federal guardrails and efforts to avoid duplication. The Appendix K authorizations by CMS allowed states to authorize up to three episodes of retainer payments/hazard pay for an individual during the period of the disaster.

On October 29, 2020, LDH approved a hazard pay rate for DSWs providing in-home supports to COVID positive participants, or quarantining participants, in the OCDD Waivers. This included back pay for those who worked with COVID-19 positive clients back to the date of the declared emergency. Hazard pay covered a period of up to 14 days for clients who were quarantined for COVID-19, or up to 40 days for those who tested positive for COVID-19. The hazard pay rate was \$0.79/15-minute unit, with a minimum of \$.50/15 minute unit going to the DSW.

On November 16, 2020, LDH approved a hazard pay rate for DSWs providing in-home supports to COVID positive participants, or quarantining participants, in LT-PCS and the Community Choices Waiver. This included back pay for those who worked with COVID-19 positive clients back to the date of the declared emergency. The Hazard Pay covered a period of up to 14 days for clients who were quarantined for COVID-19, or up to 40 days for those who tested positive for COVID-19. The hazard pay rate was \$0.79/15-minute unit, with a minimum of \$.50/15-minute unit going to the DSW.

On December 22, 2020, LDH approved a provider rate increase for OAAS-CCW Personal Assistance Services providers, OAAS-CCW Support Coordination services, and ADHC Support Coordination services effective for dates of service on or after July 1, 2020. The rate for OAAS-CCW Personal Assistance Services increased from \$2.89/15-minute unit to \$3.25/15-minute unit. Rates for Support Coordination for both OAAS-CCW and ADHC were increased by \$15 per month. A retroactive rate adjustment (claims recycle) will be done for services billed prior to December 22, 2020, with dates of service on or after July 1, 2020, to pay the difference.

CMS issued guidance on how states can receive enhanced funding that is provided through the American Rescue Plan Act of 2021 to increase access to HCBS for Medicaid beneficiaries. This will allow states to leverage federal resources to increase health equity in Medicaid beneficiaries' access to community-based supports, positive health outcomes, and community integration. The additional federal funding made available allows a state to tailor HCBS enhancements based on the needs and priorities of its residents, while protecting and strengthening the HCBS workforce, safeguarding financial stability for HCBS providers, and accelerating long-term services and supports reform and innovation. States are provided with a temporary 10-percentage-point increase to the federal medical assistance percentage for certain Medicaid HCBS from April 1, 2021 through March 31, 2022; and states are able to spend this additional funding through March 31, 2024. Louisiana has applied for this additional funding by submitting an initial spending plan to CMS for consideration of proposed activities to enhance, expand, and strengthen HCBS in our state. The state has not received approval from CMS to date. In preparing the plan, LDH engaged stakeholders regarding the activities included in the spending plan and updates. States must submit a quarterly spending plan update to CMS; and LDH is committed to continuing to collaborate with stakeholders on updates to the spending plan based on beneficiary and system needs.

The issues outlined above illustrate the many issues that LDH is regularly addressing. LDH will continue to develop strategies for ongoing monitoring and review of rates by continuing to examine existing contract opportunities that include annual cost-based methodology reporting and rate rebasing and adjustments, as well as any opportunities that CMS may approve during the Public Health Emergency. Finally, LDH will continue to work with stakeholders in making funding requests to aid them in their ongoing efforts to create stability in the delivery of services to the state's most vulnerable citizens.

Section 2 – Disability Services Reporting

Subsection 2.1 – Any changes within the previous 12 months to the Medicaid rate methodology for disability services and the current Medicaid rates for those services

While some services received a rate increase and/or restoration, changes were not made to rate methodologies.

Rates can be found at:

https://www.lamedicaid.com/provweb1/fee_schedules/feeschedulesindex.htm

OCDD Information:

1. 2020 rate changes associated with COVID-19 response:
 - a. Retainer payments to Day Program providers due to mandatory closure:
 - i. Spring: \$3 million total cost
 - ii. Fall: \$5.8 million total cost
 - b. Hazard payments – when staff work directly with someone impacted by COVID-19 (i.e. positive test result or quarantine), providers can bill an additional \$2.00/hour that must go to the worker
 - c. One-time rate adjustment – a one-time rate adjustment was given to all waiver providers for a total cost of approximately \$14 million
2. 11/2020: Implemented complex care as a supplemental payment for providers supporting individuals with complex medical and/or behavioral support needs; provider can bill an additional \$38.88/day to assist with provision of needed services
3. 10/2021: Increase of \$2.50/hour (or commensurate) for all OCDD HCBS Waiver services provided by a DSW; requirement that DSWs are paid a minimum of \$9/hour; OCDD will audit payroll records to ensure compliance; total budget is \$16 million from the NOW fund for total of approximately \$60 million with federal match

OAAS Information:

1. 2020 rate changes associated with COVID-19 response:
 - a. Retainer payments to ADHC providers due to mandatory closure: \$784,907
 - b. Hazard payments – when staff work directly with someone impacted by COVID-19 (i.e., positive test result or quarantine), providers can bill an additional \$2.00/hour that must go to the worker
 - c. One-time rate adjustment was given to LTPCS and Community Choices Personal Assistance Services providers for dates of service 10/1/2019 – 12/31/2019 : \$8 million
 - d. One-time rate adjustment was given to ADHC providers for dates of service 1/27/2020 – 3/23/2020: \$429,563

Subsection 2.2 – The date of the last rebasing of Medicaid rates for intermediate care facilities for people with developmental disabilities and any future dates on which those rates are due to be rebased

The last rebase was effective for dates of service beginning July 1, 2019. The next rebase is scheduled for dates of service beginning on or after July 1, 2022.

- 3.56% net reduction in the rate between FY 2008 and FY 2019.
- ICF/IID rates have seen either a rebase or inflationary adjustment in FYs 2020, 2021 and 2022.
- Overall, ICF/IID rates have increased since FY 2008 an average of 12.91% across all bed and intensity types.
- 3/2020: ICFs received a lump sum claims payment; total cost was \$4.7M to all private ICF facilities.
- 3/2021: ICFs received a lump sum claims payment; total cost was \$7.5M to all private ICF facilities.
- FY22: There is a budgeted \$9.2M in the SFY 2022 proposed budget for inflationary adjustments for ICFs.
- Summary: In less than 24 months an additional \$53M has been paid to the ICF providers, with an additional \$9.2M in the next fiscal year.

Subsection 2.3 – The amount of funding that would be required for an annual adjustment, based on the inflation index, to Medicaid rates for disability services

	TOTAL FUNDS NEEDED
TOTAL MEDICAID	\$930,587
TOTAL OAAS	\$15,667,629
TOTAL OCDD	\$20,741,503

Subsection 2.4 – The health market basket inflation index used in calculating the amount of funding that would be needed for an annual adjustment of Medicaid rates for disability services

Medicaid and OCDD are using the current 3.85% health market basket index for calculations of an annual adjustment of Medicaid rates for disability services.

For ICFs, 1.032035%; the Skilled Nursing Facility without Capital Market Basket Index published by HIS Global Insight, Inc. (IGI) is being used.

Depending upon the nature of the service, OAAS is utilizing either the Consumer Price Index used by the Louisiana Division of Administration Office of Planning and Budget, which is currently set at 2.11%, the health market basket index (currently 3.85%), as well as any other factors OAAS is using to calculate the amount of funding that would be needed for annual adjustments of Medicaid rates.

Subsection 2.5 – Any proposed changes to the methodology for determining Medicaid rates for disability services.

LDH has no proposed changes to the methodology for determining Medicaid rates for disability services.

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