



**State of Louisiana**  
Louisiana Department of Health  
Office of the Secretary

**To:** **The Honorable John Bel Edwards, Governor, State of Louisiana (Via Email)**  
**The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (apa.submission@ag.louisiana.gov)**  
**The Honorable Patrick Page Cortez, President, Louisiana Senate (apa.senatepresident@legis.la.gov)**  
**The Honorable Clay Schexnayder, Speaker, Louisiana House of Representatives (apa.housespeaker@legis.la.gov)**  
**Catherine Brindley, Editor, Louisiana Register (reg.submission@la.gov)**  
**Senate Health and Welfare Committee (apa.s-h&w@legis.la.gov)**  
**House Health and Welfare Committee (apa.h-hw@legis.la.gov)**

**From:** **Dr. Courtney N. Phillips, Secretary, LDH**

**Date:** **February 20, 2023**

**Re:** **Justification of Promulgation of Emergency Rule**  
**Home and Community-Based Services Waivers Children's Choice Waiver Direct Service Worker Wages and Bonus Payments (LAC 50:XXI.12101).**

**MEMORANDUM**

In accordance with the Administrative Procedure Act (La. R.S. 49:950 *et seq.*) as amended, the Louisiana Department of Health is submitting the following emergency rule that amends Home and Community-Based Services Waivers Children's Choice Waiver Direct Service Worker Wages and Bonus Payments (LAC 50:XXI.12101).

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Paul Rhorer, at [paul.rhorer@la.gov](mailto:paul.rhorer@la.gov), and Erin Downing at [erin.downing@la.gov](mailto:erin.downing@la.gov).

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

**Cc:** Tara A. LeBlanc, LDH Medicaid Director  
Shannon Bibbins, LDH Medicaid Deputy Director  
Julie Foster Hagan, LDH OCDD Assistant Secretary  
Veronica Dent, LDH Medicaid Manager  
Bethany Blackson, LDH Legislative Liaison  
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

**DECLARATION OF EMERGENCY**

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

**Home and Community-Based Services 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 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 Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:962, and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services approved the use of bonus payments for agencies providing Children's Choice Waiver services to home and community-based services waiver participants under section 9817 of the American Rescue Plan Act of 2021. The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated Emergency Rules which amended LAC 50:XXI.12101 in order to establish workforce bonus payments in

the Children's Choice Waiver for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8 and Volume 49, Numbers 1 and 2). The department subsequently promulgated an Emergency Rule, effective February 10, 2023, which rescinded these emergency provisions (*Louisiana Register*, Volume 49, Number 2).

This Emergency Rule is being promulgated to amend provisions governing reimbursement in the Children's Choice Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$6,534,036 for state fiscal year 2022-2023.

Effective February 20, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend provisions governing reimbursement in the Children's Choice Waiver in order to establish workforce bonus payments for direct service workers

and support coordination providers along with audit procedures and sanctions.

**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 Bonus Payments

a. Support coordination providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each support coordination worker that worked with participants for those months.

b. The support coordination worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all eligible support coordination workers of any working status, whether full-time or part-time.

2. Audit Procedures for Support Coordination Workforce 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 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 \$250 monthly workforce bonus payments;

ii. the number of employees identified as having been paid less than the \$250 monthly workforce bonus payments;

iii. the persistent failure to pay the \$250 monthly workforce 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 SupportService Worker Wages and Workforce Bonus Payments

a. Establishment of Direct SupportService 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 supportservice 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 supportservice 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 supportservice workers shall be ~~\$9.00~~\$9 per hour.

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

v. The Department of Health reserves the right to adjust the direct supportservice worker wage floor as needed through appropriate rulemaking promulgation consistent with the ~~Louisiana~~ Administrative Procedure Act.

b. Establishment of ~~Audit Procedures for~~ Direct SupportService Worker ~~Wage Floor~~Workforce Bonus Payments

i. ~~The wage enhancement payments reimbursed to providers shall be subject to audit by the department~~Providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each direct service worker that worked with participants for that month.

ii. ~~Providers shall provide to the department or its representative all requested documentation to verify compliance with the direct support worker wage floor~~The

direct service worker who provided services from April 1, 2021 to October 31, 2022 that worked with participants must receive at least \$250 of this \$300 bonus payment paid to providers.

This bonus payment is effective for all eligible 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 October 31, 2022.

~~iv. Providers shall produce~~LDH reserves the requested documentation upon request and within the time frame provided by the departmentright 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.

~~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 Bonus Payments

~~i. 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.~~

~~(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 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) ~~Direct Service Worker Wage Floor~~

(i). the failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour;

(ii.) ~~the~~ number of I/DD HCBS direct service workers identified as having been paid less than the wage floor minimum of \$9 per hour; or

(iii). the persistent failure to pay I/DD HCBS direct service workers the wage floor minimum of \$9 per hour;

(b). Direct Service Worker Workforce Bonus Payments

(i). the failure to pay eligible I/DD HCBS direct service workers the \$250 monthly bonus payments;

(ii). the number of eligible I/DD HCBS direct service workers identified as having not been paid the \$250 monthly bonus; or

(iii). the persistent failure to pay eligible I/DD HCBS direct service workers the \$250 monthly bonus payments; or

(c). 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 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.

#### **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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips

Secretary

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