



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.housepeaker@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, Louisiana Department of Health

Date: September 20, 2021

Re: Justification of Promulgation of Emergency Rule
Home and Community-Based Services Waivers - Children's Choice Waiver
- Direct Support Worker Wages, LAC 50:XXI.12101

MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 40:950 *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 Support Worker Wages, LAC 50:XXI.12101.

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Kelly Zimmerman, at Kelly.Zimmerman@la.gov.

Attachments: Emergency Rule – Home and Community-Based Services Waivers - Children's Choice Waiver - Direct Support Worker Wages, LAC 50:XXI.12101

Cc: Kelly Zimmerman, Interim Medicaid Deputy Director, LDH
Jennifer Katzman, Interim Senior Staff Advisor, LDH
Veronica Dent, Medicaid Program Manager, LDH
Allen Enger, Rulemaking Coordinator, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

DECLARATION OF EMERGENCY

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

**Home and Community-Based Services Waivers
Children's Choice Waiver
Direct Support Worker Wages
(LAC 50:XXI.12101)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends 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. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 119 of the 2021 Regular Session of the Louisiana Legislature provided additional funding to the Department of Health for providers of home and community-based services waivers to increase the wages of direct support workers and personal care attendants, pursuant to rulemaking and audit. House Concurrent Resolution 127 (HCR 127) of the 2021 Regular Session of the Louisiana Legislature directed the department to make adjustments in the state Medicaid budget for the purpose of allocating funding more equitably to providers throughout the

disabilities services system. In compliance with Act 119 and HCR 127, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions governing reimbursement in the Children's Choice Waiver in order to establish a wage floor for direct support workers along with audit procedures, sanctions and penalties.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring staffing for and access to Children's Choice Waiver services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$3,538,540 for state fiscal year 2021-2022.

Effective October 1, 2021, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing reimbursement in the Children's Choice Waiver to establish a wage floor for direct support workers along with audit procedures, sanctions and penalties.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice

Chapter 121. Reimbursement Methodology

§12101. Unit of Reimbursement

A. - B.4. ...

5. Direct Support Worker Wages

a. Establishment of Direct Support 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 support 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 support 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 support workers shall be \$9.00 per hour.

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

v. The Department of Health reserves the right to adjust the direct support worker wage floor as needed

through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

b. Establishment of Audit Procedures for Direct Support Worker Wage Floor

i. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

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

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

iv. Providers shall produce the requested documentation upon request and within the time frame provided by the department.

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.

c. Sanctions

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:

(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.

d. New Opportunities Waiver Fund

i. The department shall deposit civil fines and the interest collected from providers into the New Opportunities Waiver Fund.

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 47:

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 Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Mr. Gillies 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



9/20/24