

NOTICE OF INTENT

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

**Home and Community-Based Services Waivers
Community Choices Waiver
Home Delivered Meals and Assistive Technology Services
(LAC 50:XXI.Chapter 83 and 9501)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.Chapter 83 and §9501 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) authorized funding under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to expand and enhance services provided to home and community-based services waiver participants in the Medicaid program.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule, which amended the provisions governing the Community Choices Waiver (CCW) in order to add medically tailored meals and assistive technology as covered services, as

authorized under section 9817 of ARPA (*Louisiana Register*, Volume 48, Number 12). This proposed Rule continues the provisions of the November 18, 2022 Emergency Rule..

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 7. Community Choices Waiver

Chapter 83. Covered Services

§8307. Personal Assistance Services

A. - C. ...

D. PAS may be provided through the "a.m." and "p.m." delivery option defined as follows:

1. ...

2. a minimum of one hour and a maximum of two hours of PAS provided to assist the participant at the end of his/her day, referred to as the "p.m." portion of this PAS delivery method; and

3. - 4. ...

5. "a.m. and p.m." PAS cannot be "shared";

D.6. - K. ...

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011),

amended LR 39:320 (February 2013), LR 39:1778 (July 2013), LR 40:791 (April 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1898 (October 2018), LR 47:885 (July 2021), LR 49:

§8317. Home Delivered Meals

A. - C. ...

D. Medically tailored meals (MTMs) may be delivered to participants with chronic conditions when discharging from the hospital and/or nursing facility. In addition, participants will receive nutritional guidance to support healthy food choices for their third meal and snacks.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 49:

§8331. Assistive Technology

A. Assistive technology services include the following:

1. an item, piece of equipment or product system, acquired commercially, that is used to increase, maintain or improve functional capabilities of participants; and

2. the assistance provided to the participant in the acquisition, set up and use of an assistive technology device:
 - a. evaluating to determine if an assistive technology device is appropriate for the participant;
 - b. purchasing the most appropriate assistive technology device for the participant; and
 - c. costs associated with the delivery, set up, and training.

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:

Chapter 95. Reimbursement

§9501. Reimbursement and Rate Requirements

A. - A.6. ...

B. The following services shall be reimbursed at the authorized rate or approved amount of the assessment, inspection, installation/fitting, maintenance, repairs, adaptation, device, equipment, or supply item and when the service has been prior authorized by the plan of care:

1. - 5. ...

6. monitored in-home caregiving (MIHC) assessment;

7. certain nursing, and skilled maintenance therapy procedures; and

8. assistive technology.

C. - H. ...

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:322 (February 2013), LR 39:508, 508 (March 2013), re promulgated LR 39:1048 (April 2013), amended LR 39:1779 (July 2013), LR 40:793 (April 2014), LR 42:897 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1902 (October 2018), LR 47:886 (July 2021), 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.

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 providing medically tailored meals to CCW participants to improve their health and decrease hospitalizations, and assistive technology to improve their quality of life by allowing them to participate in their healthcare decisions and socialize with others virtually.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973, by providing low-cost, specialized meals to CCW participants to improve their health and decrease hospitalizations, and assistive technology to those who would otherwise not have access to these services.

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 a positive impact on small businesses by providing reimbursement for services that were previously not covered.

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 provides reimbursement for services that were previously not covered.

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 January 30, 2023.

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 January 9, 2023. 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 January 26, 2023 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 January 9, 2023. 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

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

| | | | |
|-----------------------------|------------------------|---------------|--|
| Person Preparing Statement: | <u>Veronica Dent</u> | Dept.: | <u>Health</u> |
| Phone: | <u>342-3228</u> | Office: | <u>Bureau of Health Services Financing</u> |
| Return Address: | <u>P.O. Box 91030</u> | Rule Title | <u>Home and Community-Based Services Waivers</u> |
| | <u>Baton Rouge, LA</u> | | <u>Community Choices Waiver</u> |
| | | | <u>Home Delivered Meals and</u> |
| | | | <u>Assistive Technology Services</u> |
| | | Date Rule | |
| | | Takes Effect: | <u>November 18, 2022</u> |

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. **THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 22-23. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed and final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$1,013,062 for FY 22-23, \$899,230 for FY 23-24, and \$0 for FY 24-25. The funding for these services is authorized under section 9817 of the American Rescue Plan Act of 2021 (ARPA) through March 31, 2025 or until it is exhausted. It is anticipated that \$432 will be collected for the federal share of the expense for promulgation of the proposed and final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the November 18, 2022 Emergency Rule, which amended the provisions governing the Community Choices Waiver (CCW) in order to add medically tailored meals and assistive technology as covered services, as authorized under section 9817 of the American Rescue Plan Act of 2021 (ARPA). This proposed rule will benefit CCW participants by providing low-cost, specialized meals to improve their health and decrease hospitalizations. The proposed rule also provides iPads/Tablets and Kindles to participants who otherwise would not have access to virtual technology, which will allow them to participate in their healthcare decisions and socialize with others virtually to improve their quality of life. Providers of CCW services will benefit from this proposed rule since it provides reimbursement for services that were previously not covered. It is anticipated that implementation of this proposed rule will increase payments to CCW providers by approximately \$1,012,630 for FY 22-23, \$899,230 for FY 23-24, and \$0 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

12/7/2022
Date of Signature

Alan M. Bostick
Legislative Fiscal Officer or Designee

12/8/22
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule continues the provisions of the November 18, 2022 Emergency Rule, which amended the provisions governing the Community Choices Waiver (CCW) in order to add medically tailored meals and assistive technology as covered services, as authorized under section 9817 of the American Rescue Plan Act of 2021 (ARPA).

B. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) authorized funding under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to expand and enhance services provided to home and community-based services waiver participants in the Medicaid program.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule, which amended the provisions governing the Community Choices Waiver (CCW) in order to add medically tailored meals and assistive technology as covered services, as authorized under section 9817 of ARPA (*Louisiana Register*, Volume 48, Number 12). This proposed Rule continues the provisions of the November 18, 2022 Emergency Rule.

C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

Yes, it is anticipated that implementation of this proposed rule will result in increased programmatic costs to the Medicaid program of approximately \$1,013,494 for FY 22-23, \$899,230 for FY 23-24, and \$0 for FY 24-25. In FY 22-23 \$864 is included for the state's administrative expense for promulgation of this proposed and final rule.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) NO. If no, provide justification as to why this rule change should be published at this time

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) authorized funding under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to expand and enhance services provided to home and community-based services waiver participants in the Medicaid program. In addition, Act 119 of the 2022 Regular Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. Implementation of this proposed rule will provide CCW participants with access to medically tailored meals and assistive technology to improve their health and quality of life. Providers of CCW services will benefit from the proposed rule since it provides reimbursement for services that were previously not covered.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

| COSTS | FY 23 | FY 24 | FY 25 |
|-------------------------|--------------------|------------------|--------------|
| Personal Services | | | |
| Operating Expenses | \$864 | \$0 | \$0 |
| Professional Services | | | |
| Other Charges | \$1,012,630 | \$899,230 | \$0 |
| Equipment | | | |
| Major Repairs & Constr. | | | |
| TOTAL | \$1,013,494 | \$899,230 | \$0 |
| POSITIONS (#) | | | |

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The expenses reflected above are the estimated increases in programmatic expenditures in the Medicaid program. In FY 22-23, \$864 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

| SOURCE | FY 23 | FY 24 | FY 25 |
|-----------------------|--------------------|------------------|--------------|
| State General Fund | \$432 | \$0 | \$0 |
| Agency Self-Generated | | | |
| Dedicated | | | |
| Federal Funds | \$1,013,062 | \$899,230 | \$0 |
| Other (Specify) | | | |
| TOTAL | \$1,013,494 | \$899,230 | \$0 |

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule. The funding for these services is authorized under section 9817 of the American Rescue Plan Act of 2021 (ARPA) through March 31, 2025 or until it is exhausted.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

| REVENUE INCREASE/DECREASE | FY 23 | FY 24 | FY 25 |
|----------------------------------|--------------------|------------------|--------------|
| State General Fund | | | |
| Agency Self-Generated | | | |
| Dedicated Funds* | | | |
| Federal Funds | \$1,013,062 | \$899,230 | \$0 |
| Local Funds | | | |
| TOTAL | \$1,013,062 | \$899,230 | \$0 |

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The funding for these services is authorized under section 9817 of the American Rescue Plan Act of 2021 (ARPA) through March 31, 2025 or until it is exhausted. The amounts reflected above are the estimated increase in the federal share of programmatic expenditures for the Medicaid program. In FY 22-23, \$432 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

This proposed rule continues the provisions of the November 18, 2022 Emergency Rule, which amended the provisions governing the Community Choices Waiver (CCW) in order to add medically tailored meals and assistive technology as covered services, as authorized under section 9817 of the American Rescue Plan Act of 2021 (ARPA). This proposed rule will benefit CCW participants by providing low-cost, specialized meals to improve their health and decrease hospitalizations. The proposed rule also provides iPads/Tablets and Kindles to participants who otherwise would not have access to virtual technology, which will allow them to participate in their healthcare decisions and socialize with others virtually to improve their quality of life.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Providers of CCW services will benefit from this proposed rule since it provides reimbursement for services that were previously not covered. It is anticipated that implementation of this proposed rule will increase payments to CCW providers by approximately \$1,012,630 for FY 22-23, \$899,230 for FY 23-24, and \$0 for FY 24-25.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.