

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

**Home Health Program
American Rescue Plan Act Funding
(LAC 50:XIII.Chapter 8)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.Chapter 8 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) approved the Department of Health's administration and payment model for funds provided under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to agencies that provide home health care services. In compliance with the CMS-approved model for administering ARPA funds, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing ARPA funding in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health services to beneficiaries under the age of 21 who are in a Medicaid waiver program (*Louisiana Register*, Volume 49, Number 1). This proposed Rule is being

promulgated to continue the provisions of the January 10, 2023
Emergency Rule.

Title 50

**PUBLIC HEALTH-GENERAL
Part XIII. Home Health Program
Subpart 1. Home Health Services**

Chapter 8. American Rescue Plan Act Funding

§801. Nursing Recruitment and Retention Payments

A. General Provisions

1. Nurses that provide extended home health (EHH) services may be eligible to receive recruitment and retention bonuses through April 2024.

2. A nurse is defined as an individual who possesses and maintains a valid license as a licensed practical nurse (LPN) or registered nurse (RN).

3. All payments shall be administered by the home health agency (HHA) that employs the nurse. If a nurse is employed at multiple agencies, only one HHA may pay the recruitment and retention payment.

4. HHAs shall submit an invoice and supporting documentation for each nurse that meets the requirements outlined in this Chapter on a monthly basis and shall comply with all other requirements established by LDH to receive a payment.

5. HHAs shall disburse the entire payment to the nurse and are prohibited from reducing the payment in any way.

6. HHAs that provide the required documentation, comply with all applicable requirements, and have at least one nurse a month receiving a bonus payment will be eligible to invoice LDH for an administrative fee of \$2,500 each month.

B. Recruitment

1. Recruitment is the hiring of a new nurse who commits to providing a minimum of 120 hours of EHH services to beneficiaries under the age of 21 who are in a Medicaid waiver program in each calendar month.

2. A one-time, lump sum payment of \$5,000 may be paid to any nurse who is hired by the HHA and commits to providing a minimum of 120 hours of EHH services to beneficiaries in a waiver program and has not received the retention lump sum bonus payment outlined in this Chapter.

3. Each nurse may only receive the lump sum recruitment bonus payment once.

C. Retention

1. Existing nurses who commit to providing a minimum of 120 hours of EHH services to eligible waiver beneficiaries in a calendar month and have not received the recruitment or retention lump sum bonus payment will receive a \$5,000 retention bonus.

2. Nurses who receive the recruitment or retention lump sum bonus payment shall be eligible to receive a monthly payment of \$200 if they provided at least 120 hours of EHH

services to eligible waiver beneficiaries during the previous calendar month.

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, 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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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 no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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 may have a positive impact on small businesses as described in the Act as it provides an administrative fee to home health agencies to make the recruitment and retention payments.

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, no direct and indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule provides an administrative fee to the home health agencies to make the recruitment and retention payments.

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 April 3, 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 March 13, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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: Veronica Dent Dept.: Health
Phone: 342-3228 Office: Bureau of Health Services Financing
Return Address: P.O. Box 91030 Rule Title: Home Health Program
Baton Rouge, LA American Rescue Plan Act Funding

Date Rule Takes Effect: January 10, 2023

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 will result in estimated programmatic costs of approximately \$961,128 for FY 22-23 and \$2,883,750 for FY 23-24. It is anticipated that \$756 (\$378 SGP and \$378 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 \$961,128 for FY 22-23 and \$2,883,750 for FY 23-24. It is anticipated that \$378 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 January 10, 2023 Emergency Rule, which adopted provisions in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health (EHH) services to beneficiaries under the age of 21 who are in a Medicaid waiver program. The proposed rule complies with the Department's administration and payment model that was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for funds provided under Section 9817 of the American Rescue Plan Act of 2021. This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses which ensures that pediatric Medicaid waiver participants continue to receive EHH services. Implementation of this proposed rule is anticipated to increase expenditures for home health services by approximately \$1,921,500 for FY 22-23 and \$5,767,500 for FY 23-24.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses that provide extended home health services to pediatric Medicaid waiver participants.

Tara A. LeBlanc
Signature of Agency Head or Designee
Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee
February 8, 2023
Date of Signature

Evan Brasel, Interim Deputy Fiscal Officer
Legislative Fiscal Officer or Designee
2/8/23
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 January 10, 2023 Emergency Rule, which adopted provisions in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health (EHH) services to beneficiaries under the age of 21 who are in a Medicaid waiver program. The proposed rule complies with the Department's administration and payment model that was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for funds provided under Section 9817 of the American Rescue Plan Act of 2021.

- 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) approved the Department of Health's administration and payment model for funds provided under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to agencies that provide home health care services. In compliance with the CMS-approved model for administering ARPA funds, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing ARPA funding in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health services to beneficiaries under the age of 21 who are in a Medicaid waiver program (*Louisiana Register*, Volume 49, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 10, 2023 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 \$1,922,256 for FY 22-23 and \$5,767,500 for FY 23-24. In FY 22-23 \$756 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) X NO. If no, provide justification as to why this rule change should be published at this time

Act 199 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 increase reimbursement for home health services rendered to beneficiaries and ensure providers continued participation in the Medicaid Program.

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	\$756	\$0	
Professional Services			
Other Charges	\$1,921,500	\$5,767,500	
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,922,256	\$5,767,500	
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, \$756 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	\$961,128	\$2,883,750	
Agency Self-Generated			
Dedicated			
Federal Funds	\$961,128	\$2,883,750	
Other (Specify)			
TOTAL	\$1,922,256	\$5,767,500	

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 through the American Rescue Plan Act.

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	\$961,128	\$2,883,750	
Local Funds			
TOTAL	\$961,128	\$2,883,750	

*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 amounts reflected above are the estimated increase in the federal share of programmatic expenditures for the Medicaid program. In FY 22-23, \$378 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 January 10, 2023 Emergency Rule, which adopted provisions in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health (EHH) services to beneficiaries under the age of 21 who are in a Medicaid waiver program. The proposed rule complies with the Department's administration and payment model that was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for funds provided under Section 9817 of the American Rescue Plan Act of 2021. This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses which ensures that pediatric Medicaid waiver participants continue to receive EHH services.

- 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.

Implementation of this proposed rule is anticipated to increase expenditures by approximately \$1,921,500 for FY 22-23 and \$5,767,500 for FY 23-24.

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 proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses that provide extended home health services to pediatric Medicaid waiver participants.