

**NOTICE OF INTENT**

**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**

**(LAC 50:XXI.11105, 11301, 11303, 11501, 11529, 12101, and 12301)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.11105, §11301, §11303, §11501, §11529, §12101, and §12301 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 Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend the provisions governing delivery of services in the Children's Choice Waiver in order to include family members as paid caregivers and shared services under certain conditions.

**Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE  
Part XXI Home and Community-Based Services Waivers  
Subpart 9. Children's Choice Waiver**

**Chapter 111. General Provisions**

**§11105. Money Follows the Person Rebalancing Demonstration**

A. - A.1. ...

B. Individuals must meet the following criteria for participation in the MFP Rebalancing demonstration.

1. Individuals with a developmental disability must:

a. ...

b. occupy a licensed, approved and enrolled Medicaid nursing facility bed for at least 60 days or have been hospitalized in an acute care hospital for 60 days with referral for nursing facility placement; and

B.1.c. - E. ...

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 for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2524 (December 2017), amended by the Department of Health, Bureau of Health Services Financing, and the Office for the Citizens with Developmental Disabilities, LR 48:

**Chapter 113. Service**

**§11301. Service Cap**

A. - D. ...

E. Children's choice services are capped at \$20,200 per individual per plan of care year.

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 26:2793 (December 2000), amended LR 28:1787 (August 2002), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:2157 (July 2011), LR 39:507 (March 2013), LR 39:2498 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

**§11303. Service Definitions**

A. - D.6. ...

7. Excluded are those adaptations or improvements to the home or vehicle, which are of general utility, and are not of direct medical or remedial benefit to the participant, such

as carpeting, roof repair, central air conditioning, whole home generators, a fence, etc.

D.8. - E.2. ...

3. For purposes of this service only, "family" is defined as persons who live with or provide care to a participant in the children's choice waiver and may include a parent, spouse, stepparent, grandparent, child, and sibling, relative, foster family, legal guardian, or in-law

E.4. - F.1.b. ...

2. Family members who provide family support services must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant. Service hours shall be capped at 40 hours per week, Sunday to Saturday, for services delivered by family members living in the home.

a. - b. Repealed.

3. Legally responsible individuals (such as a parent or spouse) and legal guardians may provide family support services for their own child, provided that the care is extraordinary in comparison to that of a child of the same age without a disability and the care is in the best interest of the child. Legally responsible individuals and legal guardians may not provide family support services delivered through self-direction.

G. - N.4.a. ...

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 26:2793 (December 2000), repromulgated  
for LAC, LR 28:1983 (September 2002), amended by the Department  
of Health and Hospitals, Office of the Secretary, Office for  
Citizens with Developmental Disabilities, LR 33:1871 (September  
2007), 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  
39:2498 (September 2013), LR 40:67 (January 2014), LR 41:126  
(January 2015), amended by Department of Health, Bureau of  
Health Services Financing and the Office for Citizens with  
Developmental Disabilities, LR 43:2525 (December 2017), LR 48:

## **Chapter 115. Provider Participation Requirements**

### **Subchapter A. Provider Qualifications**

#### **§11501. Support Coordination Providers and Service Providers**

A. - B. ...

1. Family members who provide family support  
services must meet the same standards of service, training  
requirements, and documentation requirements as caregivers who  
are unrelated to the participant.

a. - b. Repealed.

2. Legally responsible individuals (such as a parent or spouse) and legal guardians who provide family support services for their own child must meet the same standards of service, training requirements, and documentation requirements as caregivers who are unrelated to the participant. Monitoring shall be conducted to ensure proper documentation and that the services are delivered in accordance with the child's plan of care. Payments to legally responsible individuals, legal guardians and family members living in the home shall be audited on a semi-annual basis to ensure payment for services rendered.

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 26:2793 (December 2000), repromulgated for LAC, LR 28:1984 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

**§11529. Professional Services Providers**

A. - G. ...

H. Providers of professional services must maintain adequate documentation to support service delivery and compliance with the approved plan of care and provide said documentation upon the LDH's request.

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 for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), amended LR 41:128 (January 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

## **Chapter 121. Reimbursement Methodology**

### **§12101. Unit of Reimbursement**

A. - B.1. ...

a. Up to two participants may choose to share family support services if they share a common provider of this service. Family support services may share a direct support worker (DSW) across two waivers: the Residential Options Waiver (community living supports) and/or New Opportunities Waiver (individual and family supports). However, sharing a DSW at the same time across all three waivers is not allowed.

1.b. - 3. ...

4. - 4.a. Repealed.

5. - 5.d.i. ...

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:

## **Chapter 123. Self-Direction Initiative**

### **§12301. Self-Direction Service Delivery Option**

A. ...

B. Participant Responsibilities. Waiver participants  
choosing the self-directed service delivery option must  
understand the rights, risks and responsibilities of managing



their own care and individual budget. If the participant is under 18 years of age or is unable to make decisions independently, the participant must have an authorized representative who understands the rights, risks and responsibilities of managing his/her care and supports within the participant's individual budget. The employer must be at least 18 years of age. Responsibilities of the participant or authorized representative include:

1. - 3.b. ...

4. all services rendered shall be prior approved and in accordance with the plan of care;

5. all services must be documented in service notes, which describes the services rendered and progress towards the participant's personal outcomes plan of care; and

6. authorized representatives may be the employer of the self-directed option, but may not also be the employee.

C. - C.1.d.iv. ...

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, Office for Citizens with Developmental Disabilities, LR 39:2504 (September 2013), amended by the Department of Health, Bureau of Health

Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2527 (December 2017), LR 48:

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 as it allows family members to act as caregivers.

#### **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 as it allows family members to act as caregivers.

#### **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 no impact on small businesses, as described in R.S. 49:978.1 et seq.

#### **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 or 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.

#### **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. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2022.

#### **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 April 11, 2022. 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 April 28, 2022 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 April 11, 2022. 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>342-3238</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>Children's Choice Waiver</u>
	Date Rule Takes Effect: <u>June 20, 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 will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 21-22. It is anticipated that \$1,296 (\$648 SFG and \$648 FED) will be expended in FY 21-22 for the state's administrative expenses for promulgation of this proposed rule.

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


It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$648 will be collected in FY 21-22 for the federal share of the expense for promulgation of this proposed rule and the final rule.

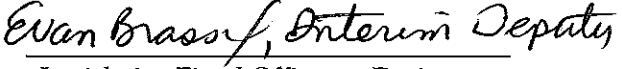
**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing delivery of services in the Children's Choice Waiver in order to include family members as paid caregivers and shared services under certain conditions. This proposed rule will benefit Children's Choice Waiver beneficiaries by allowing flexibility in the delivery of services. It is anticipated that implementation of this proposed rule will not result in costs to Children's Choice Waiver providers or small businesses in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by allowing services to be provided virtually under certain conditions.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule has no known effect on competition and employment.

  
\_\_\_\_\_  
Signature of Agency Head or Designee  
Patrick Gillies, Medicaid Executive Director  
\_\_\_\_\_  
Typed Name & Title of Agency Head or Designee  
March 8, 2022  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Legislative Fiscal Officer or Designee  
*Fiscal Officer*  
  
3/8/22  
\_\_\_\_\_  
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 amends the provisions governing delivery of services in the Children's Choice Waiver in order to include family members as paid caregivers and shared services under certain conditions.

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

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend the provisions governing delivery of services in the Children's Choice Waiver in order to include family members as paid caregivers and shared services under certain conditions.

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.

No. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 21-22. In FY 21-22, \$1,296 is included for the state's administrative expense for promulgation of the proposed rule and the 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

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 22	FY 23	FY 24
Personal Services			
Operating Expenses	\$1,296	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,296	\$0	\$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.

In FY 21-22, \$1,296 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 22	FY 23	FY 24
State General Fund	\$648	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds	\$648	\$0	\$0
Other (Specify)			
TOTAL	\$1,296	\$0	\$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.

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 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 22	FY 23	FY 24
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$648	\$0	\$0
Local Funds			
TOTAL	\$648	\$0	\$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.

In FY 21-22, \$648 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 amends the provisions governing delivery of services in the Children's Choice Waiver in order to include family members as paid caregivers and shared services under certain conditions. This proposed rule will benefit Children's Choice Waiver beneficiaries by allowing flexibility in the delivery of 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.

It is anticipated that implementation of this proposed rule will not result in costs to Children's Choice Waiver providers or small businesses in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by allowing services to be provided virtually under certain conditions.

**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.