

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

(LAC 50:XXI.Chapters 81, 83, 85, 86, 87, 89, 93 and 95)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.Chapters 81, 83, 85, 86, 87, 89, 93, and 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Throughout the duration of the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE), the Department of Health allowed additional individuals to function as personal assistance services (PAS) workers and to be principal caregivers under the monitored in-home caregiving (MIHC) service for participants in the Community Choices Waiver (CCW). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) subsequently approved the department's request to amend the CCW to adopt this policy permanently after the COVID-19 PHE ended.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend the provisions governing the CCW to update the individuals approved to be PAS workers and MIHC principal caregivers, permit MIHC participants to receive adult day health care services; however, ADHC and MIHC cannot be received on the same day in order to avoid duplication of services. Financial management services is also being added as a new service when participants choose the self-direction option in order to align the administrative Rule with the CMS-approved waiver amendment.

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

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Community Choices Waiver (CCW) includes individuals who:

A.1. - D. ...

1. The appropriate form authorized by the Office of Aging and Adult Services (OAAS) shall be used to designate a responsible representative.

a. ...

b. The written designation is valid until it is revoked by the individual granting the designation. To revoke

the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. - 2.b. ...

3. No individual, unless granted an exception by OAAS, may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based service programs. This includes but is not limited to:

- a. the Program of All-Inclusive Care for the Elderly (PACE);
- b. long term-personal care services (LT-PCS);
- c. ...
- d. the Adult Day Health Care (ADHC) Waiver.

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 37:3517 (December 2011), amended 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 44:1896 (October 2018), repromulgated LR 44:2005 (November 2018), amended LR 50:

§8103. Request for Services Registry

A. ...

B. Individuals who desire their name to be placed on the community choices waiver registry shall be screened to determine whether they meet:

1. nursing facility level of care; and

B.2. - C. ...

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 37:3517 (December 2011), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1896 (October 2018), LR 50:

§8105. Programmatic Allocation of Waiver Opportunities

A. ...

B. Community Choices Waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for Community Choices Waiver opportunities, in the order listed:

1. individuals with substantiated cases of abuse or neglect referred by protective services who, without Community Choices Waiver services, would require institutional placement to prevent further abuse or neglect;

2. - 4. ...

5. individuals who are not presently receiving home and community-based services (HCBS) under another Medicaid program, including, but not limited to:

a. ...

b. long term-personal care services (LT-PCS);

and/or

c. ...

6. all other eligible individuals on the CCW registry, by date of first request for services.

C. If an applicant is determined to be ineligible for any reason, the next individual on the CCW registry is notified as stated above and the process shall continue until an individual is determined eligible. A Community Choices Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Notwithstanding the priority group provisions, 75 Community Choices Waiver opportunities are reserved for qualifying individuals who have been diagnosed with amyotrophic lateral sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

E. Notwithstanding the priority group provisions, up to 300 Community Choices Waiver opportunities may be granted to qualified individuals who require emergency expedited waiver

services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an emergency expedited waiver opportunity, the individual must, at the time of the request for the expedited opportunity, be approved for the maximum amount of services allowable under the LT-PCS and require institutional placement, unless offered an expedited waiver opportunity.

2. The following criteria shall be considered in determining whether to grant an emergency expedited waiver opportunity:

a. - 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 of Aging and Adult Services, LR 37:3517 (December 2011), amended LR 39:319 (February 2013), LR 39:1778 (July 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1896 (October 2018), LR 45:756 (June 2019), LR 50:

Chapter 83. Covered Services

§8302. Long Term-Personal Care Services

A. Community Choices Waiver participants cannot also receive long term-personal care services.

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 39:320 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1897 (October 2018), LR 50:

§8305. Environmental Accessibility Adaptations

A. - A.4. ...

a. If final inspection, conducted either by OAAS staff or the assessor, reveals that the adaptation(s) is substandard, the costs of correcting the work will be the responsibility of the party in error.

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), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1897 (October 2018), LR 50:

§8307. Personal Assistance Services

A. Personal assistance services (PAS) provide assistance and/or supervision necessary for the participant with functional impairments to remain safely in the community. PAS include the following services and supports based on the approved POC:

1. - 3. ...

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) where the direct service worker has received proper training pursuant to R.S. 37:1031-1034;

A.5. - H. ...

I. The following individuals are allowed to provide PAS to a participant:

1. the participant's spouse;

a. when it is determined that the spouse may be the worker due to the participant needing extraordinary care.

2. - 4. ...

5. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

6. Repealed.

J. The participant's responsible representative is prohibited from being a PAS worker for a participant.

1. Repealed.

K. Participants are not permitted to receive PAS while living in a home or property owned, operated, or controlled by an owner, operator, agent, or employee of a licensed provider of long term care services and providers are prohibited from providing and billing for services under these circumstances. Participants may not live in the home of their direct support worker unless the direct support worker is related to, and it is the choice of, the participant.

1. The provisions of §8307.K may be waived with prior written approval by OAAS or its designee.

L. It is permissible for the PAS allotment to be used flexibly within a prior authorized week in accordance with the participant's preferences and personal schedule, and with proper documentation.

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 49:486 (March 2023), LR 50:

§8309. Transition Services

A. - C. ...

D. These services do not include monthly rental payments, mortgage expenses, food, recurring monthly utility charges, and household appliances and/or items intended for purely diversional/recreational purposes. These services may not be used to pay for furnishing or to set-up living arrangements that are owned or leased by a waiver provider.

E. - F. ...

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 37:3520 (December 2011), 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 50:

§8313. Caregiver Temporary Support Services

A. - E. ...

F. When caregiver temporary support services are provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Caregiver temporary support services may be utilized no more than 30 calendar days or 29 overnight stays per plan of

care year for no more than 14 consecutive calendar days or 13 consecutive overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

H. Caregiver temporary support services may not be delivered at the same time as adult day health care or personal assistance services.

I. Caregiver temporary support services may be provided for the relief of the principal caregiver for participants who receive monitored in-home caregiving (MIHC) services.

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 37:3521 (December 2011), amended LR 39:321 (February 2013), LR 40:792 (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 50:

§8323. Skilled Maintenance Therapy

A. - F.2.h. ...

3. speech language therapy (SLT) services which preserve abilities for independent function in communication, facilitate oral motor and swallowing function, facilitate use of

assistive technology, and/or prevent progressive disabilities including:

a. - h. ...

i. consulting or collaborating with other service providers or family members, as specified in the POC.

G. - 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 37:3522 (December 2011), amended LR 39:321 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1899 (October 2018), LR 47:885 (July 2021), LR 50:

§8329. Monitored In-Home Caregiving Services

A. ...

B. The principal caregiver is responsible for supporting the participant to maximize the highest level of independence possible by providing necessary care and supports that may include:

1. - 4. ...

5. supervision or assistance while escorting/ accompanying the participant outside of the home to perform

services indicated in the plan of care and to provide the same level of supervision or assistance as would be rendered in the home; and

6. ...

C. The following individuals are allowed to be the MIHC principal caregiver:

1. the participant's spouse;
2. the participant's curator;
3. the participant's tutor;
4. the participant's legal guardian; or
5. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

D. The participant's responsible representative is prohibited from being a MIHC principal caregiver for a participant.

1. - 3. Repealed.

E. Participants electing monitored in-home caregiving services shall not receive the following Community Choices Waiver services during the period of time that the participant is receiving monitored in-home caregiving services:

1. personal assistance services; or
2. home delivered meal services.

F. Monitored in-home caregiving providers must be licensed HCBS providers with a monitored in-home caregiving module who employ professional staff, including a registered nurse and a care manager, to support principal caregivers to perform the direct care activities performed in the home. The provider must assess and approve the home in which services will be provided, and shall enter into contractual agreements with caregivers who the agency has approved and trained. The provider will pay per diem stipends to caregivers.

G. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring participant health and caregiver performance. All protected health information (PHI) must be transferred, stored, and otherwise utilized in compliance with applicable federal and state privacy laws. Providers must sign, maintain on file, and comply with the LDH HIPAA business associate addendum.

H. The department shall reimburse for monitored in-home caregiving services based upon a tiered model which is designed to address the participant's acuity.

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 40:792 (April 2014), amended LR 41:2642 (December 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1900 (October 2018), LR 50

§8335. Financial Management Services

A. Financial management services (FMS) assist the participant to live independently in the community while controlling their services by choosing the staff who work with them.

B. FMS are provided to participants who have chosen and are capable of self-directing their Community Choices Waiver services.

C. FMS are provided by a Medicaid enrolled fiscal employer agent (F/EA) and the F/EA's responsibilities and standards for participation are identified in LAC 50:XXI.Chapter 11, Subchapters A-C.

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 50:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. - C.1. ...

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him/her to receive provider-managed services under the following circumstances:

a. - c. ...

d. the participant or responsible representative:

i. - iii. ...

iv. fails to cooperate with the department, fiscal agent or support coordinator;

C.2.d.v. - D.3. ...

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 37:3523 (December 2011), amended LR 39:321 (February 2013), LR 39:1779 (July 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1900 (October 2018), LR: 49:1726 (October 2023), LR 50:

Chapter 86. Organized Health Care Delivery System

§8601. General Provisions

A. - C. ...

D. Prior to enrollment, an OHCDS must show the ability to provide all of the following Community Choices Waiver services:

1. - 8. ...

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 40:792 (April 2014), amended LR 41:2643 (December 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:

Chapter 87. Plan of Care

§8701. Plan of Care

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC shall include services covered under the Community Choices Waiver in addition to services covered under the Medicaid state plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The

POC shall be developed using a person-centered process coordinated by the support coordinator.

B. - C.3. ...

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 37:3524 (December 2011), amended LR 39:321 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:

Chapter 89. Admission and Discharge Criteria

§8901. Admission Criteria

A. Admission to the Community Choices Waiver program shall be determined in accordance with the following criteria:

1. - 3. ...

4. justification, as documented in the approved POC, that the Community Choices Waiver services are appropriate, cost effective and represent the least restrictive environment for the individual; and

5. reasonable assurance that the health and welfare of the participant can be maintained in the community with the provision of Community Choices Waiver services.

B. ...

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 37:3524 (December 2011), amended LR 39:322 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:

§8903. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the Community Choices Waiver program if any of the following conditions are determined.

1. - 4. ...

5. Continuity of services is interrupted as a result of the participant not receiving and/or refusing Community Choices Waiver services (exclusive of support coordination services) for a period of 30 consecutive days.

EXCEPTION: An exception may be granted by OAAS to delay discharge if interruption is due to an acute care hospital, rehabilitation hospital, or nursing facility admission.

6. The health and welfare of the individual cannot be reasonably assured through the provision of Community Choices Waiver services.

7. - 9. ...

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 37:3524 (December 2011), amended LR 39:322 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. ...

B. The provider shall not request payment unless the participant for whom payment is requested is receiving services in accordance with the Community Choices Waiver program provisions and the services have been prior authorized and actually provided.

C. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

C.1. - D. ...

E. Any provider of services under the Community Choices Waiver shall not interfere with the eligibility, assessment, care plan development, or care plan monitoring processes with use of methods including, but not limited to:

1. - 3. ...

F. Any provider of services under the Community Choices Waiver shall have the capacity and resources to provide all aspects of any service they are enrolled to provide in the specified service area.

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 37:3524 (December 2011), amended LR 39:322 (February 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1901 (October 2018), LR 50:

§9303. Reporting Requirements

A. ...

B. Support coordinators and direct service providers are responsible for documenting the occurrence of incidents or accidents that affect the health and welfare of the participant and for completing an incident report. The incident report shall

be submitted to the department or its designee with the specified requirements within specified timelines.

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), 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 50:

Chapter 95. Reimbursement

§9501. Reimbursement and Rate Requirements

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for the following services, and reimbursement shall not be made for less than one quarter hour (15 minutes) of service:

1. personal assistance services (except for the "a.m. and p.m." service delivery model);

- a. ...

- b. there is a separate reimbursement rate for shared personal assistance services;

2. in-home caregiver temporary support services when provided by a personal care services or home health agency;

A.3. - C.2.a. ...

D. The following services shall be reimbursed at an established monthly rate:

1. ...

2. transition intensive support coordination;

3. monthly monitoring/maintenance for certain assistive devices/technology and medical supplies procedures; and

4. financial management services.

E. - E.2. ...

F. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's, or its designee's, approval of the POC and release of prior authorization for the services.

G. - 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), repromulgated 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 49:487 (March 2023), LR 50:

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 permits additional individuals to be PAS workers and MIHC caregivers and allows CCW participants that receive MIHC to access an additional service.

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 will

have a positive impact on small businesses as it permits more individuals to be PAS workers and MIHC caregivers and allows providers to provide adult day health care (ADHC) services to participants that also receive MIHC services.

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; however, the proposed Rule may have a positive impact on the cost to the provider and the provider's ability to provide the same level of service as described in HCR 170, since it expands the individuals permitted to provide services to CCW participants and allows MIHC and ADHC services to be provided simultaneously.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan 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, 2024.

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 9, 2024. 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 April 25, 2024 in Room 173 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 9, 2024. 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.

Ralph L. Abraham, M.D.

Secretary

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

Person Preparing Statement:	<u>Lyrica Johnson</u>	Dept.:	<u>Health</u>
			<u>Bureau of Health Services</u>
Phone:	<u>342-6375</u>	Office:	<u>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>
		Date Rule Takes Effect:	<u>June 20, 2024</u>

SUMMARY
(Use complete sentences)

In accordance with Section 961 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 increased state costs of approximately \$93,022 for FY 23-24, \$100,917 for FY 24-25, and \$110,906 for FY 25-26. It is anticipated that \$2,808 (\$1,404 SGF and \$1,404 FED) will be expended in FY 23-24 for the state's administrative expense of this proposed rule and the final rule.

This proposed rule amends the provisions governing the Community Choices Waiver (CCW) to continue policy implemented during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) which allowed additional individuals to be personal assistance services (PAS) workers and principal caregivers under the monitored in-home caregiving (MIHC) service, to allow MIHC participants to receive adult day health care services (ADHC) which cannot be received on the same day to avoid duplication of services and to add financial management services as a new service when participants choose the self-direction option in order to align the administrative rule with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

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

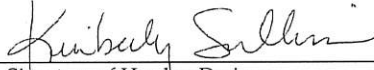
It is anticipated that the implementation of this proposed rule will increase revenue collections by approximately \$201,284 for FY 23-24, \$220,169 for FY 24-25, and \$241,960 for FY 25-26. It is anticipated that \$1,404 will be collected in FY23-24 for the federal share expense promulgation of this 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 the Community Choices Waiver (CCW) to continue policy implemented during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) which allowed additional individuals be personal assistance services workers and principal caregivers under the monitored in-home caregiving (MIHC) service, to allow MIHC participants to receive adult day health care services (ADHC); however, ADHC and MIHC cannot be received on the same day in order to avoid duplication of services. Financial management services is also being added as new service when participants choose the self-direction option in order to align the administrative rule with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). This proposed rule will allow CCW participants to continue to receive services from workers/caregivers that they are comfortable with and to have access to an additional service while receiving MIHC services. Implementation of this proposed rule will benefit CCW providers and small businesses, since it is anticipated to increase Medicaid payments for these services by approximately \$291,498 for FY 23-24, \$321,086 for FY 24-25, and \$352,866 for FY 25-26. This proposed rule also permits more individuals to be PAS workers and MIHC caregivers and allows providers to provide ADHC services to participants that also receive MIHC services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule permits more individuals to be PAS workers and MIHC caregivers and allows providers to provide ADHC services to CCW participants that also receive MIHC services.



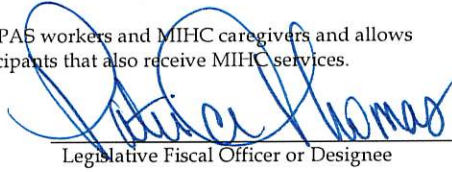
Signature of Head or Designee

Kimberly Sullivan, JD
Medicaid Executive Director

Typed Name & Title of Agency Head or Designee

03/07/2024

Date of Signature

 Denise Thomas, Deputy Fiscal Officer

Legislative Fiscal Officer or Designee

3/07/2024

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 the Community Choices Waiver (CCW) to continue policy implemented during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) which allowed additional individuals to be personal assistance services (PAS) workers and principal caregivers under the monitored in-home caregiving (MIHC) service, to allow MIHC participants to receive adult day health care services (ADHC); however, ADHC and MIHC cannot be received on the same day in order to avoid duplication of services. Financial management services is also being added as new service when participants choose the self-direction option in order to align the administrative rule with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

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

Throughout the duration of the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE), the Department of Health allowed additional individuals to function as personal assistance services (PAS) workers and to be principal caregivers under the monitored in-home caregiving (MIHC) service for participants in the Community Choices Waiver (CCW). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) subsequently approved the department's request to amend the CCW to adopt this policy permanently after the COVID-19 PHE ended.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend the provisions governing the CCW to update the individuals approved to be personal assistance services workers and MIHC principal caregivers, permit MIHC participants to receive adult day health care services; however, ADHC and MIHC cannot be received on the same day in order to avoid duplication of services. Financial management services is also being added as new service when participants choose the self-direction option in order to align the administrative rule with the CMS-approved waiver amendment.

- 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 cost to the Medicaid program of approximately \$294,306 for FY 23-24, \$321,086 for FY 24-25, and \$352,866 for FY 25-26. In FY 23-24, \$2,808 is included for the state's administrative expense for promulgation of this 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) X NO. If no, provide justification as to why this rule change should be published at this time

Act 447 of the 2023 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 align the *Louisiana Administrative Code* with the Community Choices Waiver amendment approved by CMS which permits more individuals to be personal assistance services workers and primary caregivers under the monitored in-home caregiving service and allows providers to provide adult day health care services to participants that also receive monitored in-home caregiving services.

**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 24	FY 25	FY 26
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$2,808	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	\$291,498	\$321,086	\$352,866
EQUIPMENT	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
TOTAL	\$294,306	\$321,086	\$352,866
POSITIONS (#)	0	0	0

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 expenditures in the Medicaid program. In FY 23-24, \$2,808 is included 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 24	FY 25	FY 26
STATE GENERAL FUND	\$93,022	\$100,917	\$110,906
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$201,284	\$220,169	\$241,960
OTHER (Specify)	\$0	\$0	\$0
TOTAL	\$294,306	\$321,086	\$352,866

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 government.

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 24	FY 25	FY 26
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$201,284	\$220,169	\$241,960
LOCAL FUNDS	\$0	\$0	\$0
TOTAL	\$201,284	\$220,169	\$241,960

*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 increases in federal revenue collections. In FY 23-24, \$1,404 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 the Community Choices Waiver (CCW) to continue policy implemented during the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) which allowed additional individuals be personal assistance services workers and principal caregivers under the monitored in-home caregiving (MIHC) service, to allow MIHC participants to receive adult day health care (ADHC) services; however, ADHC and MIHC cannot be received on the same day in order to avoid duplication of services. Financial management services is also being added as new service when participants choose the self-direction option in order to align the administrative rule with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). This proposed rule will allow CCW participants to continue to receive services from workers/caregivers that they are comfortable with and to have access to an additional service while receiving MIHC 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 will benefit CCW providers and small businesses, since it is anticipated to increase Medicaid payments for these services by approximately \$291,498 for FY 23-24, \$321,086 for FY 24-25, and \$352,866 for FY 25-26. This proposed rule also permits more individuals to be PAS workers and MIHC caregivers and allows providers to provide ADHC services to participants that also receive MIHC services.

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 permits more individuals to be PAS workers and MIHC caregivers and allows providers to provide ADHC services to CCW participants that also receive MIHC services.