

**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, 85, 86, 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, 85, 86, 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.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend the provisions governing the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and

workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

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

**Chapter 81. General Provisions**

**§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. - 4. ...

5. individuals who require expedited waiver services, who are approved for the maximum amount of services allowable under LT-PCS and will require institutional placement, unless offered an expedited waiver opportunity;

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

a. Program of All-Inclusive Care for the Elderly (PACE);

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

c. any other 1915(c) waiver; and

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

C. - D. ...

E. Notwithstanding the priority group provisions, up to 300 Community Choices Waiver opportunities may be granted to qualified individuals who require expedited waiver services. These individuals shall be offered an opportunity on a first-come, first-served basis.

1. To be considered for an 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 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 expedited waiver opportunity:

a. ...

b. the death or incapacitation of an informal caregiver leaves the individual without other supports;

c. ...

d. the individual lives alone and has no access to informal support; or

e. for other reasons, the individual lacks access to adequate informal support to prevent nursing facility placement.

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 50:785 (June 2024), LR 51:

## **Chapter 85. Self-Direction Initiative**

### **§8501. Self-Direction Service Option**

A. - C.2.d.vi. ...

D. Employee Qualifications. All employees under the self-direction option must:

1. ...

2. pass required criminal history background and database checks; and

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 50:787 (June 2024), LR 51:

## **Chapter 86. Organized Health Care Delivery System**

### **§8601. General Provisions**

A. - C. ...

D. Prior to enrollment, an OHCDs must demonstrate the ability to provide all of the CCW services.

1. For ADHC services, the OHCDs must show the ability to provide this service, only if there is a licensed ADHC provider in the service area.

2. - 8. Repealed.

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 50:787  
(June 2024), LR 51:

## **Chapter 93. Provider Responsibilities**

### **§9301. General Provisions**

A. ...

B. All providers (with the exception of Home Delivered Meals providers), Self-Direction (SD) employers and/or Fiscal Employer Agencies (FEAs) must ensure that statewide criminal history background checks are performed on all unlicensed persons working for their agency in accordance with R.S. 40:1203.1 et seq. and/or other applicable state law upon hire.

1. Ensure that the provider or SD employer and/or FEA does not hire unlicensed persons who have a conviction that bars employment in accordance with R.S. 40:1203.3 or other applicable state law.

a. The provider, SD employer and/or FEA shall have documentation on the final disposition of all charges that bars employment pursuant to applicable state law.

2. Ensure that all employees, including contractors, have not been excluded from participation in the Medicaid programs by checking the databases upon hire and monthly thereafter.

a. The provider, SD employer and/or FEA must maintain documentation of the results of these database checks.

C. 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.

D. 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.

1. OAAS or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

E. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department, or its designee.

F. 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. harassment;
2. intimidation; or
3. threats against program participants, members of their informal support network, LDH staff or support coordination staff.

G. 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 50:788 (June 2024), LR 51:

## **Chapter 95. Reimbursement**

### **§9501. Reimbursement and Rate Requirements**

A. - G. ...

H. Personal assistance service providers and Self-Direction employers must pay their direct services workers (DSW) a minimum of \$9 per hour.



I. ADHC providers must pay their ADHC direct support workers a minimum of \$9 per hour.

J. The state has the authority to set and change provider rates and/or provide lump sum payments to providers based upon funds allocated by the legislature.

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 50:788 (June 2024), LR 51:

**§9503. Direct Support/Service Worker Wages, Other Benefits, and Workforce Retention Bonus Payments**

A. Direct Support/Service Worker Wage Floor and Other Benefits

1. Repealed.

2. - 3. ...

4. All PAS and ADHC providers affected by this rate increase shall be subject to passing 70 percent of their rate increases directly to the direct support/service worker in various forms. These forms include a minimum wage floor of \$9 per hour and other wage and non-wage benefits. These wage floor and wage and non-wage benefits are effective for all affected direct support/service workers, including contracted workers, of any working status, whether full-time or part-time.

5. Repealed.

6. ...

B. Direct Support/Service Worker Workforce Bonus Payments

1. Repealed.

2. The PAS and ADHC direct support/service worker who provided services from April 1, 2021 to October 31, 2022 to participants, must receive at least \$250 of this \$300 monthly bonus payment paid to the provider. This bonus payment is effective for all affected direct support/service workers, including contracted workers, of any working status, whether full-time or part-time.

C. - D.1.d. ...

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 49:684 (April 2023), LR 51:

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 a 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 no impact on small businesses.

### **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 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 December 30, 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 December 10, 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 December 30, 2024 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 December 10, 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.

Michael Harrington, MBA, MA

Secretary

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

Person Preparing Statement:	<u>Lyrica Johnson</u>	Dept.:	<u>Health</u>
Phone:	<u>342-6375</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>
		Date Rule Takes Effect:	<u>February 20, 2025</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 have no programmatic fiscal impact to the state other than the cost of promulgation for FY 24-25. It is anticipated that \$1404 (\$702 SGF and \$702 FED) will be expended in FY 24-25 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule amends the provisions governing the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

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

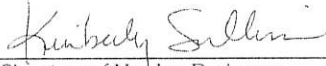
It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 24-25. It is anticipated that \$702 will be collected in FY 24-25 for the federal share of the expense for promulgation of this proposed 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 the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria. Implementation of this proposed rule will not result in costs to providers and small businesses in FY 24-25, FY 25-26, and FY 26-27.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Head or Designee

Kimberly Sullivan, JD  
Medicaid Executive Director

Typed Name & Title of Agency Head or Designee

11/04/24

Date of Signature

  
Patricia Thomas, Deputy Fiscal Officer

Legislative Fiscal Officer or Designee

11/06/2024

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). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

- 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 of Aging and Adult Services propose to amend the provisions governing the Community Choices Waiver (CCW). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

- 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 24-25. In FY 24-25, \$702 is included for the state's administrative expense for promulgation of this 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 25	FY 26	FY 27
PERSONAL SERVICES	\$0	\$0	\$0
OPERATING EXPENSES	\$702	\$0	\$0
PROFESSIONAL SERVICES	\$0	\$0	\$0
OTHER CHARGES	\$0	\$0	\$0
EQUIPMENT	\$0	\$0	\$0
MAJOR REPAIR & CONSTR.	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$702</b>	<b>\$0</b>	<b>\$0</b>
<b>POSITIONS (#)</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 24-25, \$702 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 25	FY 26	FY 27
STATE GENERAL FUND	\$702	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$702	\$0	\$0
OTHER (Specify)	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$1404</b>	<b>\$0</b>	<b>\$0</b>

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.

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 25	FY 26	FY 27
STATE GENERAL FUND	\$0	\$0	\$0
AGENCY SELF-GENERATED	\$0	\$0	\$0
DEDICATED	\$0	\$0	\$0
FEDERAL FUNDS	\$702	\$0	\$0
LOCAL FUNDS	\$0	\$0	\$0
TOTAL	\$702	\$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 24-25, \$702 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). The amendments aim to add a new priority group, specify the requirements for criminal history background checks and database checks for employees, update the Organized Health Care Delivery System (OHCDS) language to reflect the additional CCW services, revise the reimbursement language to agree with the wage floor requirements, and modify the language regarding direct support/service worker wages, other benefits, and workforce retention bonus payments to indicate that Louisiana Department of Health is no longer establishing the criteria.

- 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 not result in costs to providers and small businesses in FY 24-25, FY 25-26, and FY 26-27.

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 has no known effect on competition and employment