

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
New Opportunities Waiver
Direct Support Worker Wages
(LAC 50:XXI.14301)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.14301 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.

Act 119 of the 2021 Regular Session of the Louisiana Legislature provided additional funding to the Department of Health for providers of home and community-based services waivers to increase the wages of direct support workers and personal care attendants, pursuant to rulemaking and audit. House Concurrent Resolution 127 (HCR 127) of the 2021 Regular Session of the Louisiana Legislature directed the department to make adjustments in the state Medicaid budget for the purpose of allocating funding more equitably to providers throughout the disabilities services system. In compliance with Act 119 and HCR 127, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental

Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the New Opportunities Waiver in order to establish a wage floor for direct support workers along with audit procedures, sanctions, and penalties (*Louisiana Register*, Volume 47, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 1, 2021 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Unit of Reimbursement

A. - E. ...

F. Direct Support Worker Wages

1. Establishment of Direct Support Worker Wage Floor for Medicaid Home and Community-Based Services for Intellectual and Developmental Disabilities

a. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing defined direct support workers will receive the equivalent of a \$2.50 per hour rate increase.

b. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct support workers with an effective date of service for the

identified home and community based waiver services provided beginning October 1, 2021.

c. The minimum hourly wage floor paid to direct support workers shall be \$9.00 per hour.

d. All providers of services affected by this rate increase shall be subject to a direct support worker wage floor of \$9.00 per hour. This wage floor is effective for all affected direct support workers of any work status (full-time, part-time, etc.)

e. The Department of Health reserves the right to adjust the direct support worker wage floor as needed through appropriate rulemaking promulgation consistent with the Louisiana Administrative Procedure Act.

2. Establishment of Audit Procedures for Direct Support Worker Wage Floor

a. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

b. Providers shall provide to the department or its representative all requested documentation to verify compliance with the direct support worker wage floor.

c. This documentation may include, but not be limited to, payroll records, wage and salary sheets, check stubs, etc.

d. Providers shall produce the requested documentation upon request and within the time frame provided by the department.

e. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support workers may result in:

- i. sanctions; and
- ii. disenrollment in the Medicaid Program.

3. Sanctions

a. The provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend on:

i. failure to pay I/DD HCBS direct support workers the floor minimum of \$9.00 per hour;

ii. the number of employees identified as having been paid less than the \$9.00 per hour floor; or

iii. the persistent failure to pay the floor minimum of \$9.00 per hour.

iv. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

4. New Opportunities Waiver Fund

a. The department shall deposit civil fines and the interest collected from providers into the New Opportunities Waiver Fund.

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 Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), LR 36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April 2013), LR 40:80 (January 2014), LR 42:898 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:58 (January 2018), LR 45:44 (January 2019), LR 46:1682 (December 2020), 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, since the wage floor will ensure that direct support workers are providing care and support to families.

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 assures access to direct support worker services for NOW recipients.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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. 49:965.2 et seq., as this will increase rates paid to providers for direct support worker 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, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule permits Medicaid reimbursement at a higher rate for the services of direct support workers.

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 November 29, 2021.

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 November 9, 2021. 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 November 29, 2021 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 November 9, 2021. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person Preparing Statement: Veronica Dent Dept.: Health
Phone: 342-3238 Office: Bureau of Health Services Financing
Return Address: PO Box 91030 Rule Title: Home and Community-Based Services Waivers
Baton Rouge, LA New Opportunities Waiver
Direct Support Worker Wages
Date Rule Takes Effect: October 1, 2021

SUMMARY
(Use complete sentences)

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

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$14,285,423 for FY 21-22, \$23,545,877 for FY 22-23 and \$23,545,877 for FY 23-24. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 21-22 for the state's administrative expense for promulgation of this proposed rule and the final 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 increase federal revenue collections by approximately \$34,923,125 for FY 21-22, \$50,265,649 for FY 22-23, and \$50,265,649 for FY 23-24. It is anticipated that \$432 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 continues the provisions of the October 1, 2021 Emergency Rule which, in compliance with Act 119 and House Concurrent Resolution 127 of the 2021 Regular Session of the Louisiana Legislature, amended the provisions governing reimbursement in the New Opportunities Waiver (NOW) in order to establish a wage floor for direct support workers along with audit procedures, sanctions and penalties. This proposed rule will be beneficial to NOW participants by assuring that providers are adequately staffed with direct support workers. Small businesses and providers will benefit from implementation of this proposed rule as it is anticipated that it will increase payments to providers of NOW services by approximately \$49,207,684 for FY 21-22, \$73,811,526 for FY 22-23, and \$73,811,526 for FY 23-24.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This 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

October 7, 2021
Date of Signature



Legislative Fiscal Officer or Designee

10/8/21
Date of Signature

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

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

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

This proposed rule continues the provisions of the October 1, 2021 Emergency Rule which, in compliance with Act 119 and House Concurrent Resolution 127 of the 2021 Regular Session of the Louisiana Legislature, amended the provisions governing reimbursement in the New Opportunities Waiver (NOW) in order to establish a wage floor for direct support workers along with audit procedures, sanctions and penalties.

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

Act 119 of the 2021 Regular Session of the Louisiana Legislature provided additional funding to the Department of Health for providers of home and community-based services waivers to increase the wages of direct support workers and personal care attendants, pursuant to rulemaking and audit. House Concurrent Resolution 127 (HCR 127) of the 2021 Regular Session of the Louisiana Legislature directed the department to make adjustments in the state Medicaid budget for purpose of allocating funding more equitably to providers throughout the disabilities services system. In compliance with Act 119 and HCR 127, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the New Opportunities Waiver in order to establish a wage floor for direct support workers along with audit procedures, sanctions, and penalties (*Louisiana Register*, Volume 47, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 1, 2021 Emergency Rule.

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

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

Yes. It is anticipated that implementation of this proposed rule will result in increased programmatic costs of approximately \$49,208,548 for FY 21-22, \$73,811,526 for FY 22-23, and \$73,811,526 for FY 23-24. In FY 21-22, \$864 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) X NO. If no, provide justification as to why this rule change should be published at this time

Act 119 of the 2021 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 be beneficial since the increased reimbursement will ensure that providers of New Opportunities Waiver services are adequately staffed with direct support workers.

**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	\$864	\$0	\$0
Professional Services			
Other Charges	\$49,207,684	\$73,811,526	\$73,811,526
Equipment			
Major Repairs & Constr.			
TOTAL	\$49,208,548	\$73,811,526	\$73,811,526
POSITIONS (#)			

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

The expenses reflected above are the estimated increases in expenditures in the Medicaid program. In FY 21-22, \$864 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 22	FY 23	FY 24
State General Fund	\$14,285,423	\$23,545,877	\$23,545,877
Agency Self-Generated			
Dedicated			
Federal Funds	\$34,923,125	\$50,265,649	\$50,265,649
Other (Specify)			
TOTAL	\$49,208,548	\$73,811,526	\$73,811,526

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 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 22	FY 23	FY 24
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$34,923,125	\$50,265,649	\$50,265,649
Local Funds			
TOTAL	\$34,923,125	\$50,265,649	\$50,265,649

*Specify the particular fund being impacted.

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

The amounts reflected above are the estimated increase in the federal share of programmatic expenditures for the Medicaid program. In FY 21-22, \$432 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

This proposed rule continues the provisions of the October 1, 2021 Emergency Rule which, in compliance with Act 119 and House Concurrent Resolution 127 of the 2021 Regular Session of the Louisiana Legislature, amended the provisions governing reimbursement in the New Opportunities Waiver (NOW) in order to establish a wage floor for direct support workers along with audit procedures, sanctions and penalties. This proposed rule will be beneficial to NOW participants by assuring that providers are adequately staffed with direct support workers.

- 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.

Small businesses and providers will benefit from implementation of this proposed rule as it is anticipated that it will increase payments to providers of NOW services by approximately \$49,207,684 for FY 21-22, \$73,811,526 for FY 22-23, and \$73,811,526 for FY 23-24.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

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

This rule has no known effect on competition and employment.