



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 10, 2021

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Dr. Courtney N. Phillips
Secretary

A handwritten signature in blue ink, appearing to read "Courtney N. Phillips", is written over the "From:" field.

Re: Second Report 50:XXI.12101 – Home and Community-Based Services Waivers –
Children’s Choice Waiver – Direct Support Worker Wages

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Home and Community-Based Services Waivers – Children’s Choice Waiver – Direct Support Worker Wages, LAC 50:XXI.12101.

A Notice of Intent on the proposed amendments was published in the October 20, 2021 issue of the *Louisiana Register* (LR 47:1568). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2021, Notice of Intent when it is published as a final rule in the January 20, 2021, issue of the *Louisiana Register*.

Please contact Charles Ayles, at charles.ayles@la.gov and Carol Lee, at carol.lee@la.gov, if you have any questions or require additional information about this matter.

Cc: Julie Foster Hagen, OCDD Assistant Secretary, LDH
Kelly Zimmerman, Interim Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Home and Community-Based Services Waivers
Children's Choice Waiver
Direct Support Worker Wages
(LAC 50:XXI.12101)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.12101 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 Children's Choice 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 9. Children's Choice
Chapter 121. Reimbursement Methodology
§12101. Unit of Reimbursement
A. - B.4.a. ...**

5. Direct Support Worker Wages

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

i. 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.

ii. 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.

iii. The minimum hourly wage floor paid to direct support workers shall be \$9 per hour.

iv. 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.)

v. 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.

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

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

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

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

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

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

- (a) sanctions; or
- (b) disenrollment in the Medicaid Program.

c. Sanctions

i. 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:

- (a) failure to pay I/DD HCBS direct support workers the floor minimum of \$9 per hour;
- (b) the number of employees identified as having been paid less than the \$9 per hour floor;
- (c) the persistent failure to pay the floor minimum of \$9 per hour; or
- (d) failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

d. New Opportunities Waiver Fund

i. 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 Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:2504 (September 2013), LR 40:68 (January 2014), LR 41:128 (January 2015), LR 42:896 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

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 Children's Choice recipients.

Small Business Statement

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 a positive impact on small businesses, as described in R.S. 49:965.2 et seq. as it 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**

**RULE TITLE: Home and Community-Based Services
Waivers— Children’s Choice Waiver**

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$855,332 for FY 21-22, \$1,409,127 for FY 22-23 and \$1,479,583 for FY 23-24. It is anticipated that \$864 (\$432 SFG 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 \$2,090,416 for FY 21-22, \$3,008,199 for FY 22-23, and \$3,158,609 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
SMALL BUSINESSES, DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL 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 Children's Choice Waiver 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 Children's Choice Waiver 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 Children's Choice

Waiver services by \$2,944,884 for FY 21-22, \$4,417,326 for FY 22-23, and \$4,638,192 for FY 23-24.
IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2110#051

Alan M. Boxberger
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 10, 2021

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Ruth Johnson
Undersecretary

Re: Second Report 50:XXI.14301 – Home and Community-Based Services Waivers –
New Opportunities Waiver – Direct Support Worker Wages

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Home and Community-Based Services Waivers – New Opportunities Waiver – Direct Support Worker Wages, LAC 50:XXI.14301.

A Notice of Intent on the proposed amendments was published in the October 20, 2021 issue of the *Louisiana Register* (LR 47:1570). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2021, Notice of Intent when it is published as a final rule in the January 20, 2021, issue of the *Louisiana Register*.

Please contact Charles Ayles, at charles.ayles@la.gov and Carol Lee, at carol.lee@la.gov, if you have any questions or require additional information about this matter.

Cc: Julie Foster Hagen, OCDD Assistant Secretary, LDH
Kelly Zimmerman, Interim Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

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 per hour.

d. All providers of services affected by this rate increase shall be subject to a direct support worker wage floor of \$9 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 per hour;
- ii. the number of employees identified as having been paid less than the \$9 per hour floor; or
- iii. the persistent failure to pay the floor minimum of \$9 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
RULE TITLE: Home and Community-Based Services
Waivers—New Opportunities Waiver
Direct Support Worker Wages**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT 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
SMALL BUSINESSES, DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL 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.

Patrick Gillies
Medicaid Executive Director
2110#052

Alan M. Boxberger
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 10, 2021

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Dr. Courtney N. Phillips
Secretary

Re: Second Report 50:XXI.16903 – Home and Community-Based Services Waivers – Residential Options Waiver – Direct Support Worker Wages

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Home and Community-Based Services Waivers – Residential Options Waiver – Direct Support Worker Wages, LAC 50:XXI.16903.

A Notice of Intent on the proposed amendments was published in the October 20, 2021 issue of the *Louisiana Register* (LR 47:1572). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2021, Notice of Intent when it is published as a final rule in the January 20, 2021, issue of the *Louisiana Register*.

Please contact Charles Ayles, at charles.ayles@la.gov and Carol Lee, at carol.lee@la.gov, if you have any questions or require additional information about this matter.

Cc: Julie Foster Hagen, OCDD Assistant Secretary, LDH
Kelly Zimmerman, Interim Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
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Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Home and Community-Based Services Waivers
Residential Options Waiver
Direct Support Worker Wages
(LAC 50:XXI.16903)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.16903 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 Residential Options 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 13. Residential Options Waiver

Chapter 169. Reimbursement

§16903. Direct Support Professional Wages

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

1. 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.

2. 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.

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

4. 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.)

5. 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.

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

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

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

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

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

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

- a. sanctions; or
- b. disenrollment in the Medicaid Program.

C. Sanctions

1. 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:

- a. failure to pay I/DD HCBS direct support workers the floor minimum of \$9.00 per hour;
- b. the number of employees identified as having been paid less than the \$9.00 per hour floor;
- c. the persistent failure to pay the floor minimum of \$9.00 per hour; or
- d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this rule.

D. New Opportunities Waiver Fund

1. 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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2169 (October 2015), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services

Financing and the Office for Citizens with Developmental Disabilities 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 ROW 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 may have a positive impact on small businesses, as described in R.S. 49:965.2 et seq., as it 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**
**RULE TITLE: Home and Community-Based Services
Waivers—Residential Options Waiver
Direct Support Worker Wages**

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$1,027,670 for FY 21-22, \$1,693,192 for FY 22-23 and \$1,777,851 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 \$2,511,734 for FY 21-22, \$3,614,618 for FY 22-23, and \$3,795,349 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
SMALL BUSINESSES, DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL 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 Residential Options Waiver (ROW) 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 ROW 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 ROW services by approximately \$3,538,539 for FY 21-22, \$5,307,810 for FY 22-23, and \$5,573,200 for FY 23-24.

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

This rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2110#053

Alan M. Boxberger
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 10, 2021

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Dr. Courtney N. Phillips
Secretary

Re: Second Report 50:XXI.6101 – Home and Community-Based Services Waivers – Supports Waiver – Direct Support Worker Wages

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Home and Community-Based Services Waivers – Supports Waiver – Direct Support Worker Wages, LAC 50:XXI.6101.

A Notice of Intent on the proposed amendments was published in the October 20, 2021 issue of the *Louisiana Register* (LR 47:1574). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2021, Notice of Intent when it is published as a final rule in the January 20, 2021, issue of the *Louisiana Register*.

Please contact Charles Ayles, at charles.ayles@la.gov and Carol Lee, at carol.lee@la.gov, if you have any questions or require additional information about this matter.

Cc: Julie Foster Hagen, OCDD Assistant Secretary, LDH
Kelly Zimmerman, Interim Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Home and Community-Based Services Waivers
Supports Waiver—Direct Support Worker Wages
(LAC 50:XXI.6101)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.6101 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 Supports 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 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Unit of Reimbursement

A. - G. ...

H. 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 per hour.

d. All providers of services affected by this rate increase shall be subject to a direct support worker wage floor of \$9 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; or
- 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 per hour;
- ii. the number of employees identified as having been paid less than the \$9 per hour floor;
- iii. the persistent failure to pay the floor minimum of \$9 per hour; or
- 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.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), LR 37:2158 (July 2011), LR 39:1050 (April 2013), LR 40:82 (January 2014), LR 40:2587 (December 2014), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, 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 aid direct service workers who 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 Supports Waiver 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 a positive impact on small businesses, as described in R.S. 49:965.2 et seq., as it 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 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
RULE TITLE: Home and Community-Based
Services Waivers—Supports Waiver
Direct Support Worker Wages**

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

It is estimated that the implementation of this proposed rule will result in increased costs of approximately \$109,936 for FY 21-22, \$180,494 for FY 22-23, and \$180,494 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 \$268,136 for FY 21-22, \$385,318 for FY 22-23, and \$385,318 for FY 23-24. It is anticipated that \$432 will be expended in FY 21-22 for the federal administrative expenses for promulgation of the proposed rule and final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
SMALL BUSINESSES, DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL 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 Supports Waiver 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 Supports Waiver participants by assuring that providers are adequately staffed with direct support workers. Small businesses and providers will benefit from the implementation of this proposed rule as it is anticipated that it will increase payments to providers of Supports Waiver services by approximately \$377,208 for FY 21-22, \$565,812 for FY 22-23, and \$565,812 for FY 23-24.

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

This rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2110#054

Alan M. Boxberger
Deputy Fiscal Officer
Legislative Fiscal Office