



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

November 5, 2014

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeier, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Adult Day Health Care - Standards for Payment.

The Department published a Notice of Intent on this proposed Rule in the September 20, 2014 issue of the *Louisiana Register* (Volume 40, Number 9). A public hearing was held on October 29, 2014 at which only Department of Health and Hospitals staff were present. No oral testimony was given, nor written comments received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the December 20, 2014 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/RKA

Attachments (3)

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing and
Office of Aging and Adult Services

Adult Day Health Care
Standards for Payment
(LAC 50:II.Chapter 109)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to repeal LAC 50:II.Chapter 109 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated standards for payment for adult day health care (ADHC) services (*Louisiana Register*, Volume 23, Number 9). The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) subsequently adopted provisions in the ADHC Waiver and ADHC licensing Rules which contained the information covered by this Rule (*Louisiana Register*, Volume 34, Number 12; Volume 37, Number 11; Volume 38, Number 9; Volume 39, Number 9). Therefore, the department now proposes to repeal the provisions in LAC 50:II.Chapter 109 in its entirety, as these provisions were revised and repromulgated

in Part XXI, of Title 50 and in Part I of Title 48 of the
Louisiana Administrative Code.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 3. Standards for Payment

**Chapter 109. Standards for Payment - Adult Day Health Care
Services**

§10901. Forward

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1149 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10903. Program Description

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1149 (September 1997), repealed by the

Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10905. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1149 (September 1997), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1100 (June 1999), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10907. Licensure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1150 (September 1997), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1099 (June 1999), repealed by the Department of Health and Hospitals, Bureau of

Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10909. Provider Agreement

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, Office of the Secretary, Bureau of Health Services Financing, LR 13:181 (March 1987), LR 23:1150 (September 1997), LR 28:2356 (November 2002), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10911. Interdisciplinary (ID) Team

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1151 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10913. ID Team Assessments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1152 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10915. Staffings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1152 (September 1997).

§10917. Plan of Care

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1152 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10919. Progress Notes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1153 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10921. Services to be Provided

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1153 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10923. Participant Rights

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1154 (September 1997), repealed by the

Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

**§10925. Eligibility Criteria for Adult Day Health Care
Certification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1155 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10927. BHSF Admission Assessment/Vendor Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1155 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10929. Utilization Review (UR)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1157 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the **Office of Aging and Adult Services, LR 40: §10931. Inspection of Care**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1158 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40: **§10933. Discharge Planning and Implementation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1160 (September 1997), repealed by the

Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10935. Incident Reports

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1163 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10937. Complaint Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
46:153 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 23:1163 (September 1997), repealed by the
Department of Health and Hospitals, Bureau of Health Services
Financing and the Office of Aging and Adult Services, LR 40:

§10939. Prospective Payment System

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, Office of the Secretary, Bureau of Health Services Financing, LR 28:2356 (November 2002), amended LR 30:242 (February 2004), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10941. Participant Records

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 23:1156 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10945. Audits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1165 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

§10947. Compliance with Standards for Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 23:1166 (September 1997), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:

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 or autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, October 29, 2014 at 9:30 a.m. in Room 173, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary



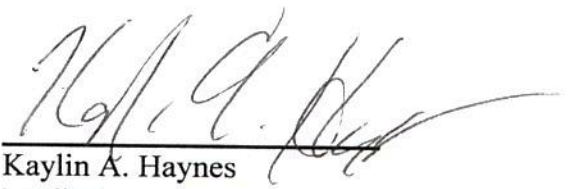
State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
October 29, 2014
9:30 a.m.

RE: Adult Day Health Care – Standards for Payment
Docket # 0626414-01
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on October 29, 2014 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.



Kaylin A. Haynes
Medicaid Policy and
Compliance

10/29/14
Date

DHH/BHSF PUBLIC HEARING

Topic – Adult Day Health Care – Standards for Payment

October 29, 2014

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	State of Louisiana Department of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	DHH
2. DENIS BEARD	"	225-342-3613	"
3.			
4. Lena R. Paul	"	342-9488	"
5.			
6.			



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

November 5, 2014

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeir, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary *[Signature]*

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers – Supports Waiver.

The Department published a Notice of Intent on this proposed Rule in the September 20, 2014 issue of the *Louisiana Register* (Volume 40, Number 9). A public hearing was held on October 29, 2014 at which only the Department of Health and Hospitals staff were present. No oral testimony was given, nor written correspondence received, regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the December 20, 2014 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/CEC

Attachments (3)

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Supports waiver
(LAC 50:XXI.5301,5501,5503, Chapters 57-61)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.5301, \$5501, \$5701-5719, \$5901 and \$6101, repeal LAC 50:XXI.5711 and adopt LAC 50:XXI.5503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Supports waiver in order to include housing stabilization transition services and housing stabilization services as covered services under the waiver program (*Louisiana Register*, Volume 40, Number 1). The department now proposes to amend the provisions governing the supports waiver in order to revise the: 1) covered services; 2) allocation of waiver opportunities; 3) target population; and 4) reimbursement methodology.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 5. Supports waiver

Chapter 53. General Provisions

§5301. Purpose

A. The mission of this waiver is to create options and provide meaningful opportunities that enhance the lives of men and women with developmental disabilities through vocational and community inclusion. The Supports waiver is designed to:

1. promote independence for individuals with a developmental disability who are age 18 or older while ensuring health and safety through a system of participant safeguards;

2. - 3. ...

B. Allocation of Waiver Opportunities. Waiver opportunities (slots) shall be offered on a first-come, first-served basis to individuals who meet the participant qualifications for this waiver with the exception of the 70 opportunities designated to the two categories as specified under §5501.

1. - 3. 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, Office of the Secretary, Office for Citizens with

Developmental Disabilities, LR 32:1604 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

Chapter 55. Target Population

\$5501. Participant Qualifications and Admissions Criteria

A. In order to qualify for the Supports waiver, an individual must be 18 years of age or older, offered a waiver opportunity (slot), and meet all of the following criteria:

1. have a developmental disability as specified in R.S. 28:451.2;

- a. - f. Repealed.

2. be on the developmental disabilities request for services registry (DDRFSR), unless otherwise specified through programmatic allocation in \$5501;

3. meet the financial eligibility requirements for the Medicaid Program;

4. meet the requirements for an intermediate care facility for persons with intellectual disabilities (ICF/ID) level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;

5. have assurance that the health and welfare of the individual can be maintained in the community with the provision of Supports waiver services;

6. have justification, as documentation in the approved plan of care, that supports waiver services are appropriate, cost effective and represent the least restrictive environment for the individual;

7. be a resident of Louisiana; and

8. be a citizen of the United States or a qualified alien.

B. Two separate categories within the supports waiver have been established for 70 opportunities with specific criteria established for each.

1. Transition from School to Work

a. Individuals must meet the following criteria for participation in the 50 Transition from School to Work opportunities:

i. have a developmental disability as specified in R.S. 28:451.2;

ii. be on the developmental disabilities request for services registry (DDRFSR), unless otherwise specified through programmatic allocation in §5501;

iii. meet the financial eligibility requirements for the Medicaid Program;

iv. meet the requirements for an ICF/ID level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;

v. have assurance that health and welfare of the individual can be maintained in the community with the provision of supports waiver services;

vi. have justification, as documentation in the approved plan of care, that supports waiver services are appropriate, cost effective and represent the least restrictive environment for the individual;

vii. be a resident of Louisiana;

viii. be a citizen of the United States or a qualified alien;

ix. be exiting the school system;

x. desire an individual, integrated job in the community; and

xi. require supports and/or services to obtain and/or maintain employment in the community, specifically Supported Employment services.

b. Each human services authority or district/local governing entity (LGE) is responsible for the prioritization of the 50 transition from school to work opportunities.

c. Individuals who participate in the 50 transition from school to work opportunities are not required to have a protected request date on the DDRFSR, but must have a current statement of approval indicating they meet the ICF/ID level of care.

d. All other Supports waiver provisions apply to the 50 transition from school to work opportunities.

2. "Priority" Opportunity

a. "Priority"-a change in circumstances of the individual and/or caregiver rendering the natural and community support system in place unable to meet the individual's needs and now requires services to sustain the individual in the community.

b. Individuals must meet the following criteria for participation in the 20 priority opportunities:

i. have a developmental disability as specified in R.S. 28:451.2;

ii. be on the developmental disabilities DDRFSR, unless otherwise specified through programmatic allocation in §5501;

iii. meet the financial eligibility requirements for the Medicaid Program;

iv. meet the requirements for an ICF/ID level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;

v. have assurance that health and welfare of the individual can be maintained in the community with the provision of Supports waiver services;

vi. have justification, as documentation in the approved plan of care, that Supports waiver services are appropriate, cost effective and represent the least restrictive environment for the individual;

vii. be a resident of Louisiana; and

viii. be a citizen of the United States or a qualified alien;

ix. be designated by the Office for Citizens with Developmental Disabilities (OCDD) Human Services Authority or District/LGE as meeting the criteria for a "priority" opportunity.

2.c. - 5. Repealed.

C. Each human services authority or district/LGE is responsible for the prioritization of these Priority opportunities.

D. Determination of prioritization for a priority opportunity is defined as follows:

1. without requested supports, there is an immediate need for services due to out-of-home placement or homelessness or potential threat of out-of-home placement or homelessness due to a change in the individual's circumstances, including but not limited to, behavioral changes/challenges, problems with the law,

or changes in his/her living arrangements or threat of losing his/her job;

2. without requested supports, there is an immediate need for services due to out-of-home placement or homelessness or potential threat of out-of-home placement or homelessness due to a change in the care giver's circumstances, including but not limited to, health issues, death, changes in job (i.e., being switched from night shift to day shift or being switched to different work location requiring more travel time) or other changes that effect the current situation; or

3. without requested supports, there is an immediate need for services due to out-of-home placement or homelessness or potential threat of out-of-home placement or homelessness due to some other family crisis which leaves the individual with no care giver support available, such as abuse/neglect or a second person in the household becomes disabled and must be cared for by the same care giver causing inability of the natural caregiver to continue necessary supports to assure health and safety of the individual.

E. Individuals who participate in the priority opportunities are not required to have a protected request date on the DDRFSR but they must have a current statement of approval indicating they meet the ICF/ID level of care.

F. All other Supports waiver provisions apply to the priority opportunities.

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 32:1604 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§ 5503. Denial of Admission or Discharge Criteria

A. Individuals shall be denied admission to, or discharged from, the Supports waiver if one of the following criteria is met:

1. the individual does not meet the financial eligibility requirements for the Medicaid Program;
2. the individual does not meet the requirement for an ICF/ID level of care;
3. the individual is incarcerated or placed under the jurisdiction of penal authorities, courts or state juvenile authorities;
4. the individual resides in another state or has a change of residence to another state;
5. the participant is admitted to an ICF/ID facility or nursing facility with the intent to stay and not to return to waiver services:

a. the waiver participant may return to waiver services when documentation is received from the treating physician that the admission is temporary and shall not exceed 90 days;

b. the participant will be discharged from the waiver on the ninety-first day if the participant is still in the ICF/ID or nursing facility;

6. the health and welfare of the participant cannot be assured through the provision of Supports waiver services within the participant's approved plan of care;

7. the individual fails to cooperate in the eligibility determination/re-determination process and in the development or implementation of the approved plan of care; and/or

8. continuity of services is interrupted as a result of the individual not receiving a supports waiver service during a period of 30 or more consecutive days. This does not include interruptions in supports waiver services because of hospitalization, institutionalization (such as ICFs/ID or nursing facilities), or non-routine lapses in services where the family agrees to provide all needed or paid natural supports. There must be documentation from the treating physician that this interruption will not exceed 90 days. During this 90-day period, the OCDD will not authorize payment for supports waiver services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

Chapter 57. Covered Services

§5701. Supported Employment Services

A. Supported employment services consists of intensive, ongoing supports and services necessary for a participant to achieve the desired outcome of employment in a community setting in the State of Louisiana where a majority of the persons employed are without disabilities. Participants utilizing these services may need long-term supports for the life of their employment due the nature of their disability, and natural supports would not meet this need.

B. - B.3. ...

C. When supported employment services are provided at a work site where a majority of the persons employed are without disabilities, payment is only made for the adaptations, supervision and training required by participants receiving the service as a result of their disabilities. It does not include payment for the supervisory activities rendered as a normal part of the business setting.

D. ...

E. These services are also available to those participants who are self-employed. Funds for self-employment may not be used to defray any expenses associated with setting up or operating a business.

F. - F.2. ...

G. Service Limitations

1. Services for job assessment, discovery and development in individual jobs and self-employment shall not exceed 2,880 units of service in a plan of care year.

2. Services for job assessment, discovery and development in group employment shall not exceed 480 units of service in a plan of care year.

3. Services for initial job support, job retention and follow-along shall not exceed 960 units of service in a plan of care year.

4. Services for initial job support, job retention and follow-along in group employment shall not exceed 240 units of service in a plan of care year.

H. Restrictions. Participants receiving individual supported employment services may also receive prevocational or day habilitation services. However, these services cannot be provided during the same service hours and cannot total more than five hours of services. Participants receiving group supported employment services may also receive prevocational or day

habilitation services; however, these services cannot be provided in the same service day.

I. Choice of this service and staff ratio needed to support the participant must be documented on the plan of care.

J. There must be documentation in the participant's file that these services are not available from programs funded under Section 110 of the Rehabilitation Act of 1973 or Sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the State Plan.

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 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5703. Day Habilitation

A. Day habilitation is services that assist the participant to gain desired community living experience, including the acquisition, retention or improvement in self-help, socialization and adaptive skills, and/or to provide the participant an opportunity to contribute to his or her community.

These services focus on enabling the participant to attain or maintain his/her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies identified in the individualized plan of care. Day habilitation services may serve to reinforce skills or lessons taught in other settings. Volunteer activities may be a part of this service.

B. Day habilitation services are provided on a regularly scheduled basis for one or more days per week in a variety of community settings that are separate from the participant's private residence. Day habilitation services should not be limited to a fixed site facility. Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice.

C. Day habilitation includes assistance in personal care with activities of daily living.

1. - 3. Repealed.

D. All transportation costs are included in the reimbursement for day habilitation services. The participant must be present to receive this service. If a participant needs transportation, the provider must physically provide, arrange for, or pay for appropriate transport to and from a central location that is convenient for the recipient and agreed upon by the Team. The recipient's transportation needs and this central location shall be documented in the plan of care.

E. Service Limitations. Services shall not exceed 4,800

units of service in a plan of care.

F. Restrictions. Participants receiving day habilitation services may also receive prevocational or individual supported employment services, but these services cannot be provided during the time period of the day and cannot total more than five hours combined. Group supported employment services cannot be provided on the same day but can be utilized on a different service day.

G. Choice of service and staff ratio needed to support the participant must be documented on the plan of care.

H. 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, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5705. Prevocational Services

A. Prevocational services are time limited with employment at the individual's highest level of work in the most integrated community setting, with the job matched to the individual's interests, strengths, priorities, abilities and capabilities, with integrated competitive employment as the optimal outcome.

Individuals receiving prevocational services may choose to pursue employment opportunities at any time. Career Planning must be a major component of prevocational services.

B. Prevocational services are to be provided in a variety of locations in the community and are not to be limited to a fixed site facility. Activities associated with prevocational services should be focused on preparing the participant for paid employment or a volunteer opportunity in the community. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Services are furnished one or more hours per day on a regularly scheduled basis for one or more days per week.

C. Participants receiving prevocational services must have an employment related goal in their plan of care, and the general habilitation activities must be designed to support such employment goals. Prevocational services are designed to create a path to integrated community-based employment for which a participant is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

D. Prevocational services can include assistance in personal care with activities of daily living. Choice of this service and staff ratio needed to support the participant must be documented on the plan of care.

E. All transportation costs are included in the reimbursement for prevocational services. The participant must be present to receive this service. If a participant needs transportation, the provider must physically provide, arrange, or pay for appropriate transport to and from a central location that is convenient for the participant and agreed upon by the Team. The participant's transportation needs and this central location shall be documented in the plan of care.

F. Service Limitations. Services shall not exceed 4,800 units of service in a plan of care.

G. Restrictions. Participants receiving prevocational services may also receive day habilitation or individualized supported employment services, but these services cannot be provided during the same time period of the day and cannot total more than five hours combined in the same service day. Group supported employment services cannot be provided on the same day but can be utilized on a different service day.

H. There must be documentation in the participant's file that this service is not available from programs funded under Section 110 of the Rehabilitation Act of 1973 or Sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the State Plan.

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 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5707. Respite

A. Respite care is a service provided on a short-term basis to a participant who is unable to care for himself/herself because of the absence or need for relief of those unpaid persons normally providing care for the participant.

B. Respite may be provided in a licensed respite care facility determined appropriate by the participant, responsible party, in the participant's home or private place of residence.

1. - 3. Repealed.

C. Service Limitations. Services shall not exceed 428 units of service in a plan of care year.

D. Choice and need for this service must be documented on the plan of care.

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 32:1606 (September 2006), amended

by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5709. Habilitation

A. Habilitation offers services designed to assist the participant in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community settings.

B. Habilitation is provided in the home or community, includes necessary transportation and is based on need with a specified number of hours weekly as outlined in the approved plan of care.

C. Habilitation services include, but are not limited to:

1. acquisition of skills needed to do household tasks which include, but are not limited to laundry, dishwashing, housekeeping, grocery shopping in the community, and other tasks to promote independence in the home and community; and

2. travel training activities in the community that promote community independence, to include but not limited to, place of individual employment. This does not include group supported employment, day habilitation, or prevocational sites.

D. Service Limitations. Services shall not exceed 285 units of service in a plan of care year.

E. Choice and need for this service must be documented on

the plan of care.

F. Participants receiving habilitation may use this service in conjunction with other Support Waiver services, as long as other services are not provided during the same period in a day.

NOTE: Participants who are age 18 through 21 may receive these services as outlined on their plan of care through the Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

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 32:1606 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5711. Individual Goods and Services

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, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006), repealed by the Department of Health and Hospitals, Bureau of Health

Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5713. Personal Emergency Response System

A. A personal emergency response system (PERS) is an electronic device connected to the participant's phone which enables a participant to secure help in the community. The system is programmed to signal a response center staffed by trained professionals once a "help" button is activated.

B. This service must be prior authorized and be in accordance with the plan of care.

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 by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:

§5715. Support Coordination

A. Support Coordination is a service that will assist participants in gaining access to all of their necessary services, as well as medical, social, educational and other services, regardless of the funding source for the services. Support coordinators shall be responsible for on-going monitoring

of the provision of services included in the participant's approved plan of care.

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 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:

§5719. Housing Stabilization Services

A. Housing stabilization services enable waiver participants to maintain their own housing as set forth in a participant's approved plan of care. Services must be provided in the home or a community setting. This service includes the following components:

1. - 3. ...

4. providing supports and interventions according to the individualized housing support plan;

a. If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator;

5. - 6. ...

7. if at any time the participant's housing is placed at risk (e.g., eviction, loss of roommate or income), providing supports to retain housing or locate and secure housing to continue community-based supports, including locating new housing, sources of income, etc.

B. - C.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:81 (January 2014), amended LR 40:

Chapter 59. Provider Participation

§5901. General Provisions

A. ...

B. If transportation is provided as part of a service, the provider must have \$1,000,000 liability insurance coverage on any vehicles used in transporting a participant.

C. - 2. ...

3. Respite Services. The provider must possess a current, valid license as a Personal Care Attendant agency or a Respite Care Center in order to provide these services.

4. Habilitation Services. The provider must possess a valid license as a personal care attendant agency in order to

provide this service.

5. - 6. ...

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), LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:

Chapter 61. Reimbursement Methodology

A. ...

B. Supported Employment Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the participant. A standard unit of service in both individual and group job assessment, discovery and development is one-quarter hour (15 minutes). A standard unit of service in individual initial job support, job retention and follow-along is one-quarter hour (15 minutes). A standard unit of service in group initial job support, job retention and follow-along is one hour or more per day.

C. Day Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the participant. A standard unit of service is one-quarter hour (15

minutes), excluding time spent in transportation.

D. Prevocational Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the participant. A standard unit of service is one-quarter hour (15 minutes), excluding time spent in transportation.

E. Respite, housing stabilization transition services and housing stabilization services shall be reimbursed at a prospective flat rate for each approved unit of service provided to the participant. One-quarter hour (15 minutes) is the standard unit of service.

F. Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the participant. One-quarter hour (15 minutes) is the standard unit of service.

G. Personal Emergency Response System (PERS). Reimbursement for the maintenance of the PERS is paid through a monthly rate. Installation of the device is paid through a one-time fixed cost.

H. Direct Support Professionals Wage Enhancement.

1. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to Support Waiver participants:

- a. habilitation,
- b. supported employment,

- c. day habilitation,
- d. center-based respite, and
- d. prevocational services.

2. At least 75 percent of the wage enhancement shall be paid in the aggregate to direct support workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

3. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

4. Providers shall be required to submit a certified wage register to the Department verifying the direct support professionals' gross wages for the quarter ending March 31, 2007. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
 - b. total number of direct support hours worked;
- and
- c. the amount paid in employee benefits.

5. A separate report shall be submitted for paid overtime.

6. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

7. The provider shall submit a report, according to the Department's specifications, that will be used to measure the effectiveness of the wage enhancement.

8. The wage enhancement payments reimbursed to providers shall be subject to audit by the Department.

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

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment from the Medicaid Program.

I. Support Coordination. Support coordination shall be reimbursed at a fixed monthly rate in accordance with the terms of the established contract.

I.1. - 9.d. Repealed.

J. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Supports waiver services shall be reduced by 5.35 percent of the rates on file as of January 21, 2010.

1. Support coordination services and personal emergency response system (PERS) services shall be excluded from the rate reduction.

K. Effective for dates of service on or after August 1, 2010, the reimbursement rates for supports waiver services shall be reduced by 2 percent of the rates on file as of July 31, 2010.

1. Support coordination services and personal emergency response system services shall be excluded from the rate reduction.

L. Effective for dates of service on or after July 1, 2012, the reimbursement rates for Supports waiver services shall be reduced by 1.5 percent of the rates on file as of June 30, 2012.

1. Personal emergency response system services shall be excluded from the rate reduction.

M. - M.1. 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, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), 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), amended LR 37:2158 (July 2011), LR 39:1050 (April 2013),

LR 40:82 (January 2014), LR 40:

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.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it allows more flexibility in receiving the Supports waiver services.

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 increases access and allows more flexibility in receiving the Supports waiver services.

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov.

Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, October 29, 2014 at 9:30 a.m. in Room 173, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary



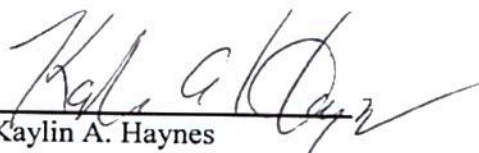
State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
October 29, 2014
9:30 a.m.

RE: Home and Community-Based Services Waivers
Supports Waiver
Docket # 102914-02
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on October 29, 2014 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.



Kaylin A. Haynes
Medicaid Policy and
Compliance

10/29/14

Date

DHH/BHSF PUBLIC HEARING

Topic – Home & Community-Based Services Waivers Support Waiver

October 29, 2014

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	State of Louisiana Department of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3884	DHH
2.			
3.			
4.			
5.			
6.			




State of Louisiana
Department of Health and Hospitals
Office of the Secretary

November 5, 2014

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeir, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Intermediate Care Facilities for Persons with Developmental Disabilities - Public Facilities - Reimbursement Methodology.

The Department published a Notice of Intent on this proposed Rule in the September 20, 2014 issue of the *Louisiana Register* (Volume 40, Number 9). A public hearing was held on October 29, 2014 at which only Department of Health and Hospitals staff were present. No oral testimony was given, nor written correspondence received, regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the December 20, 2014 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/KAH

Attachments (3)

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Developmental Disabilities—Public Facilities Reimbursement Methodology (LAC 50:VII.32969)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD) to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 39, Number 2). This Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*.

The department promulgated an Emergency Rule which amended the provisions governing the transitional rates for public facilities in order to redefine the period of transition (*Louisiana Register*, Volume 39, Number 10). The department

subsequently promulgated an Emergency Rule to assure compliance with the technical requirements of R.S. 49:953, and to continue the provisions of the October 1, 2013 Emergency Rule governing transitional rates for public facilities (*Louisiana Register*, Volume 40, Number 3). This proposed Rule is being promulgated to continue the provisions of the February 22, 2014 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32969. Transitional Rates for Public Facilities

A. - A.4.a. ...

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of four years, whichever is shorter.

C. - F.4. ...

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, LR 39:326 (February 2013), LR 40:

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.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is

scheduled for Wednesday, October 29, 2014 at 9:30 a.m. in Room 173, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary



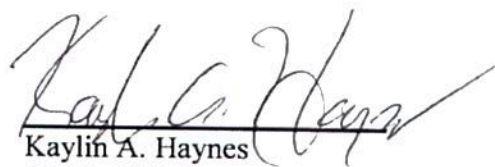
State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
October 29, 2014
9:30 a.m.

RE: Intermediate Care Facilities for Persons with Developmental Disabilities
Public Facilities
Reimbursement Methodology
Docket # 102914-03
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on October 29, 2014 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.


Kaylin A. Haynes
Medicaid Policy and
Compliance

10/29/14

Date

DHH/BHSF PUBLIC HEARING

Topic – Intermediate Care Facilities for Persons with Developmental Disabilities – Public Facilities Reimbursement Methodology

October 29, 2014

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Cornette Scott	State of Louisiana Dept. of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	225-342-3881	DHH
2. DENIS BEARD	"	225-342-3613	"
3.			
4.			
5.			
6.			

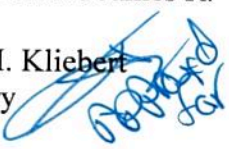


State of Louisiana
Department of Health and Hospitals
Office of the Secretary

November 5, 2014

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeir, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Prohibition of Provider Steering of Medicaid Recipients.

The Department published a Notice of Intent on this proposed Rule in the September 20, 2014 issue of the *Louisiana Register* (Volume 40, Number 9). A public hearing was held on October 29, 2014 at which only the Department of Health and Hospitals staff were present. No oral testimony was given, nor written correspondence received, regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the December 20, 2014 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/CEC

Attachments (3)

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Prohibition of Provider Steering of Medicaid Recipients (LAC 50:I.Chapter 13)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:I.Chapter 13 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing administers the Medicaid Program which provides health care coverage to eligible recipients through Medicaid contracted managed care entities and/or through Medicaid fee-for-service.

The department promulgated an Emergency Rule which adopted provisions prohibiting Medicaid providers and contracted managed care entities from engaging in provider steering in order to ensure the integrity of Medicaid recipients' freedom of choice in choosing a particular health plan in which to enroll and, when eligible, the freedom of choice in deciding whether or not to receive care through Medicaid fee-for-service. (*Louisiana Register*, Volume 39, Number 12). This Emergency Rule also established criteria for the sanctioning of providers and

managed care entities who engage in provider steering of Medicaid recipients.

The department subsequently promulgated an Emergency Rule which amended the December 1, 2013 Emergency Rule in order to clarify these provisions and to incorporate provisions governing provider appeals (*Louisiana Register*, Volume 40, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 20, 2014 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part I. Administration

Subpart 1. General Provisions

Chapter 13. Prohibition of Provider Steering

§1301. General Provisions

A. Definitions

Health Plan—any managed care organization (MCO), prepaid inpatient health plan (PIHP), prepaid ambulatory health plan (PAHP), or primary care case management (PCCM) entity contracted with the Medicaid Program.

Provider—any Medicaid service provider contracted with a health plan and/or enrolled in the Medicaid Program.

Provider Steering—unsolicited advice or mass-marketing directed at Medicaid recipients by health plans—including any of the entity's employees, affiliated providers, agents, or contractors, that is intended to influence or can reasonably be

concluded to influence the Medicaid recipient to enroll in, not enroll in, or disenroll from a particular health plan(s).

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, LR 40:

§1303. Provider Sanctions

A. First Offense. If the department determines that a provider has participated in provider steering, the department will notify the provider in writing and, at its sole discretion, may impose any of the following sanctions as applicable.

1. If a provider has steered a Medicaid recipient to enroll in a particular managed care health plan, payments to the provider for services rendered to the Medicaid recipient for the time period the recipient's care was coordinated by the health plan may be recouped.

2. If a provider has steered a Medicaid recipient to participate in Medicaid fee-for-service, payments to the provider for services rendered to the recipient for the time period the recipient's care was paid for through Medicaid fee-for-service may be recouped.

3. A provider may be assessed a monetary sanction of up to \$1,000 for each recipient steered to join a particular managed care health plan or to participate in Medicaid fee-for-

service. The maximum total penalty per incident shall not exceed \$10,000.

4. A provider may be required to submit a letter to the particular Medicaid recipient notifying him/her of the imposed sanction and his/her right to freely choose another participating managed care health plan or, if eligible, participate in Medicaid fee-for-service.

B. Second Offense

1. If a provider continues to participate in provider steering after having been cited once for provider steering, and receiving one of the above sanctions, that provider may then be subject to disenrollment from the Medicaid program.

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, LR 40:

\$1305. Provider Appeal Rights

A. Informal Hearing

1. A provider who has received a notice of sanction shall be provided with an informal hearing if the provider makes a written request for an informal hearing within 15 days of the mailing of the notice of sanction. The request for an informal hearing must be made in writing and sent in accordance with the instructions contained in the notice of sanction. The time and

place for the informal hearing will be provided in the notice scheduling the informal hearing.

2. Following the informal hearing, the department shall inform the provider, by written notice, of the results of the informal hearing. The provider has the right to request an administrative appeal within 30 days of the date on the notice of the informal hearing results that is mailed to the provider.

B. Administrative Appeals

1. The provider may seek an administrative appeal of the department's decision to impose sanctions.

2. If the provider timely requests an informal hearing, the 30 days for filing an appeal with the DAL will commence on the date the notice of the informal hearing results are mailed or delivered to the provider.

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, LR 40:

§1307. Health Plan Sanctions

A. If the department determines the Health Plan or its subcontractors has participated in provider steering, the department, at its sole discretion, may impose the following sanctions.

1. The member(s) may be dis-enrolled from the health plan at the earliest effective date allowed.

2. Up to 100 percent of the monthly capitation payment or care management fee for the month(s) the member(s) was enrolled in the health plan may be recouped.

3. The health plan may be assessed a monetary penalty of up to \$5,000 per member.

4. The health plan may be required to submit a letter to each member notifying the member of their imposed sanction and of their right to choose another health plan.

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, LR 40:

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.

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 may have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 as it ensures freedom of choice for Medicaid recipients when enrolling in a particular health plan and, when eligible, freedom of choice in

deciding whether or not to receive health care via Medicaid fee-for-service.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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, and will have no direct or indirect cost to the provider to provide the same level of service. However, the proposed Rule may have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if sanctions are imposed as a result of participation in provider steering and the recoupment of payments may adversely impacts the provider's financial standing.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding

this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, October 29, 2014 at 9:30 a.m. in Room 173, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
October 29, 2014
9:30 a.m.

RE: Prohibition of Provider Steering of Medicaid Recipients
Docket # 102914-04
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on October 29, 2014 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in black ink, appearing to read "Kaylin A. Haynes".

Kaylin A. Haynes
Medicaid Policy and
Compliance

10/29/14

Date

DHH/BHSF PUBLIC HEARING

Topic – Prohibition of Provider Steering of Medicaid Recipients

October 29, 2014

Name	Address	Telephone Number	AGENCY or GROUP you represent
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