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

Public Hearing—Substantive Changes to Proposed Rule
Home and Community-Based Services Waivers
Children’s Choice Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.12101)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities published a Notice of Intent in the September 20, 2022 edition of the *Louisiana Register* (LR 48:2418-2421) to amend LAC 50:XXI.12101 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Notice of Intent proposed to continue the provisions of the July 31, 2022 Emergency Rule which amended the provisions governing reimbursement in the Children’s Choice Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions. Upon further discussion with various stakeholders, the department has determined that revisions are necessary to the provisions governing the bonus payments approved by the U.S. Department of Health and Human Services,

Centers for Medicare and Medicaid Services (CMS) under section 9817 of the American Rescue Plan Act of 2021.

Taken together, all of these revisions will closely align the proposed Rule with the department's original intent and the concerns brought forth during subsequent discussions with stakeholders relative to the Notice of Intent as originally published.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice Waiver

Chapter 121. Reimbursement Methodology

§12101. Unit of Reimbursement

A. ...

1. Establishment of Support Coordination Workforce

Bonus Payments

a. Support coordination providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each support coordination worker that worked with participants for those months..

b. The support coordination worker who provided services to participants from April 1, 2021 to October 31, 2022 must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected

support coordination workers of any working status, whether full-time or part-time.

c. - d. Repealed

2. Audit Procedures for Support Coordination Workforce Bonus Payments

a. - e.ii. ...

3. Sanctions for Support Coordination Workforce Bonus Payments

a. The support coordination 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 upon the following factors:

i. failure to pay support coordination workers the \$250 monthly bonus payments;

ii. the number of employees identified as having been paid less than the \$250 monthly workforce bonus payments;

iii. the persistent failure to pay the \$250 monthly bonus payments; or

A.3.a.iv. - B.3. ...

4. Direct Service Worker Wages and Workforce Bonus Payments

a. - a.ii. ...

iii. LDH established a mandatory hourly wage enhancement for all DSW's employed in I-DD HCBS Services. The wage enhancement shall be a direct wage increase of 70 percent of the \$2.50 rate increase, equal to \$1.75 per hour.

iv. ...

v. The wage being received by DSW's who were working for an agency prior to October 1, 2021 and are still employed by the agency shall amount to a total of \$1.75 more per hour than they were receiving prior to October 1, 2021. In cases where this is applicable, the rate increase is not retroactive to October 1, 2021. If the current wage paid to DSWs who were working for an agency prior to October 1, 2021 and are still employed by that agency totals at least \$1.75 more per hour than the wage paid to the DSWs prior to October 1, 2021, no change to the DSW's wage is necessary to comply with the mandatory hourly wage enhancement.

vi. 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 Direct Service Worker Workforce Bonus Payments.

i. Providers providing services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300

per month for each direct service worker that worked with participants for that month.

ii. The direct service worker providing services from April 1, 2021 to October 31, 2022 that worked with participants must receive at least \$250 of this \$300 bonus payment paid to providers. This bonus payment is effective for all affected direct service workers of any working status, whether full-time or part-time.

iii. Bonus payments will end October 31, 2022.

iv. ...

v. - v.(b). Repealed.

c. Audit Procedures for Direct Service Worker Wage Floor and Workforce Bonus Payments

i. ...

(a). - (d). Repealed.

ii. - v.(b). ...

d. Sanctions for Direct Service Worker Wage Floor and Workforce Bonus Payments

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 upon the following factors:

(a). failure to pay I/DD HCBS direct service workers the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;

(b). the number of employees identified as having been paid less than the floor minimum of \$9 per hour and/or the \$250 monthly bonus;

(c). the persistent failure to pay the floor minimum go \$9 per hour and/or the \$250 monthly bonus payments; or

(d). ...

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

HISTORICAL NOTE: Promulgated by the Department of Health 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 48:40 (January 2022), LR 48:1544 (June 2022), LR 49:

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.

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding these substantive changes to the proposed Rule. A public hearing on the substantive changes to the proposed Rule is scheduled for Tuesday, February 28, 2023 at 9:30 a.m. in Room 118, 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., March 1, 2023.

Dr. Courtney N. Phillips

Secretary