

POTPOURRI

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
New Opportunities Waiver
Direct Service Worker Wages and Bonus Payments
(LAC 50:XXI.14301)

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 48:2423-2425) to amend LAC 50:XXI.14301 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 New Opportunities Waiver in order to establish workforce bonus payments for direct service workers 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 11. New Opportunities Waiver

Chapter 143. Reimbursement

§14301. Unit of Reimbursement

A. - E. ...

F. Direct Service Worker Wages and Bonus Payments

1. - 1.b. ...

c. 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.

d. ...

e. The wage being received by DSWs who were working for an agency prior to October 1, 2021 and are still employed by that 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.

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

2. Establishment of Direct Service Worker Workforce Bonus Payments

a. Providers who provided 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 those months.

b. The direct service 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 direct service workers of any working status, whether full-time or part-time.

c. Bonus payments will end October 31, 2022.

d. ...

e. - e.ii. Repealed.

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

a. ...

i. - iv. Repealed.

b. - e.ii. ...

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

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 upon the following factors:

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

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

iii. the persistent failure to pay the floor minimum of \$9 per hour and/or the \$250 monthly bonus payments;

or

F.4.a.iv. - G. ...

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 48:41 (January 2022), LR 48:1558 (June 2022), LR 49:

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