

DECLARATION OF EMERGENCY

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

Home and Community-Based Services Waivers
Community Choices Waiver
Direct Support/Service Worker Wages and Bonus Payments
(LAC 50:XXI.Chapter 95)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt LAC 50:XXI.Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:962, and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever comes first.

House Concurrent Resolution 127 (HCR 127) of the 2021 Regular Session of the Louisiana Legislature requested the department make adjustments in the state Medicaid budget for the purpose of increasing funding more equitably to providers throughout the disabilities services system. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of bonus payments for agencies providing personal assistance services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA).

In compliance with HCR 127, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which adopted provisions governing reimbursement in the Community Choices Waiver (CCW) in order to establish a wage floor and workforce bonus payments for direct support workers and personal assistance service providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department has determined that it is necessary to amend the provisions governing the bonus payments approved by CMS under section 9817 of ARPA.

This action is being taken to promote health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program.

Effective December 20, 2022 the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the July 31, 2022 Emergency Rule which adopted provisions governing reimbursement in the CCW to establish a wage floor and workforce bonus payments for direct support workers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 95. Reimbursement

§9503. Direct Support/Service Worker Wages, Other Benefits, and Workforce Bonus Payments

A. Establishment of Direct Support/Service Worker Wage Floor and Other Benefits

1. Personal assistance service (PAS) providers that were providing services on or after October 1, 2021 and employing direct service workers (DSWs) will receive the equivalent of a \$5.50 per hour rate increase.

2. DSWs providing self-direction PAS on or after July 31, 2022 shall be paid a minimum wage floor of \$9 per hour.

3. Adult day health care (ADHC) providers that were providing ADHC services on or after October 1, 2021 and employing ADHC direct support workers will receive a rate increase. The ADHC reimbursement rates shall be rebased resulting in an average increase of \$4.31 per hour (rates differ based on facility specific transportation rate).

4. All PAS and ADHC providers affected by this rate increase shall be subject to passing 70 percent of their rate increases directly to the direct support/service worker in various forms. These forms include a minimum wage floor of \$9 per hour and other wage and non-wage benefits. This wage floor and wage and non-wage benefits are effective for all affected direct support/service workers of any working status, whether full-time or part-time.

5. The rate increase, wage floor and/or wage and non-wage benefits will end March 31, 2025 or when the state's funding authorized under section 9817 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-002) is exhausted.

6. The Department of Health (LDH) reserves the right to adjust the direct support/service worker wage floor and/or wage and non-wage benefits as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

B. Establishment of Direct Support/Service Worker Workforce Bonus Payments

1. PAS and ADHC providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each direct support/service worker that worked with participants for those months.

2. The PAS and ADHC direct support/service worker who provided services from April 1, 2021 to October 31, 2022 to participants must receive at least \$250 of this \$300 monthly bonus payment paid to the provider. This bonus payment is effective for all affected direct support/service workers of any working status, whether full-time or part-time.

3. – 4. Repealed.

C. Audit Procedures for Direct Support/Service Worker Wage Floor, Other Benefits, and Workforce Bonus Payments

1. The wage enhancements, wage and non-wage benefits and bonus payments reimbursed to providers shall be subject to audit by LDH.

2. Providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the direct support/service worker wage floor, wage and non-wage benefits and/or bonus payments.

3. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, copies of unemployment insurance files, etc.

4. Providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

5. Non-compliance or failure to demonstrate that the wage enhancements, wage and non-wage benefits and/or bonus payments were paid directly to direct support/service workers may result in the following:

a. sanctions; or

b. disenrollment from the Medicaid Program.

D. Sanctions for Direct Support/Service Worker Wages, Other Benefits, and Workforce Payments

1. Providers 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 the following factors:

a. failure to pass 70 percent of the PAS and ADHC provider rate increases directly to the direct support/service workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;

b. the number of employees identified that the PAS and ADHC provider has not passed 70 percent of the provider rate increases directly to the direct support/service workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;

c. the persistent failure to not pass 70 percent of the PAS and ADHC provider rate increases directly to the direct support/service workers in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments; or

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

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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 this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips
Secretary