

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

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

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.12101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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.

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 Children's Choice Waiver Services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan Act of 2021 (ARPA). The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing reimbursement in the Children's Choice Waiver in order to establish workforce bonus payments for direct service workers and support coordination providers along with audit procedures and sanctions (*Louisiana Register*, Volume 48, Number 8). Upon further discussion with various stakeholders, the department determined that additional revisions were needed to the provisions governing the ARPA workforce bonus payments and subsequently promulgated an Emergency Rule that amended the provisions of the July 31, 2022 Emergency Rule (*Louisiana Register*, Volume 49, Number 1). The department has now determined that it is necessary to amend the December 20, 2022 Emergency Rule governing reimbursement in the Children's Choice Waiver in order to amend the provisions governing direct service worker wages.

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

Effective January 23, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions of the December 20, 2022 Emergency Rule governing reimbursement in the Children's Choice Waiver in order to amend the provisions governing direct service worker wages.

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. The bonus payments reimbursed to support coordination providers shall be subject to audit by LDH.

b. Support coordination providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the support coordination bonus payments.

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

d. Support coordination providers shall produce the requested documentation upon request and within the time frame provided by LDH.

e. Noncompliance or failure to demonstrate that the bonus payments were paid directly to support coordination workers may result in the following:

i. sanctions; or

ii. disenrollment from the Medicaid Program.

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

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

B. - B.3. ...

4. Direct Service Worker Wages and Workforce Bonus Payments

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

i. Effective October 1, 2021, providers of Medicaid home and community-based waiver services operated through the Office for Citizens with Developmental Disabilities employing direct service workers will receive the equivalent of a \$2.50 per hour rate increase.

ii. Effective October 1, 2021, this increase or its equivalent will be applied to all service units provided by direct service workers with an effective date of service for the identified home and community-based waiver services provided beginning October 1, 2021.

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. All providers of services affected by this rate increase shall be subject to a direct service worker wage floor of \$9 per hour. This wage floor is effective for all affected direct service workers of any work status, whether full-time or part-time.

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 service 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. LDH reserves the right to adjust the amount of the bonus payments paid to the direct service worker as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

v. - v.(b). Repealed.

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

i. The wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

(a). - (d). Repealed.

ii. Providers shall provide to the LDH or its representative all requested documentation to verify that they are in compliance with the direct service wage floor and bonus payments.

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

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

v. Non-compliance or failure to demonstrate that the wage enhancement and/or bonus payments were paid directly to the direct service workers may result in the following:

(a). sanctions; or

(b). disenrollment from the Medicaid Program.

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). 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 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 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

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