The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt LAC 50:XXI.Chapter 29 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. 49:953.1., 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 adult day health care (ADHC) services to home and community-based services (HCSB) waiver participants under section 9817 of the American Rescue Plan.

In compliance with HCR 127, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt provisions governing reimbursement in the Adult Day Health Care (ADHC) Waiver in order to establish a direct wage floor and workforce retention bonus payments for direct support workers at ADHC centers along with audit procedures and sanctions.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately $409,500 for state fiscal year 2022-2023.

Effective July 31, 2022, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt provisions governing reimbursement in the ADHC Waiver to establish a wage floor and workforce retention bonus payments for direct support workers at ADHC centers along with audit procedures and sanctions.

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

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

2. ADHC providers shall provide to LDH or its representative all requested documentation to verify that they are in compliance with the ADHC direct support worker wage floor, wage and non-wage benefits and/or bonus payments.
4. ADHC 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 enhancement, wage and non-wage benefits and bonus payments were paid directly to ADHC direct support workers may result in the following:
   a. sanctions; or
   b. disenrollment from the Medicaid Program.

D. Sanctions for ADHC Direct Support Worker Wage Floor, Other Benefits and Workforce Retention Bonus Payments

1. The ADHC 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 on the following factors:
   a. failure to pass 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of $9 per hour and in other wage and non-wage benefits and/or the $125 monthly bonus payments;
   b. the number of employees identified that the ADHC provider has not passed 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of $9 per hour and in other wage and non-wage benefits and/or the $125 monthly bonus payments;
   c. the persistent failure to not pass 70 percent of the ADHC provider rate increases directly to the ADHC direct support workers in the form of a floor minimum of $9 per hour and in other wage and non-wage benefits and/or the $125 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 48:

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.

Public Comments

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