The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.14301 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 occurs 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 New Opportunities Waiver (NOW) services to home and community-based services (HCBS) waiver participants under section 9817 of the American Rescue Plan. The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing reimbursement in the NOW in order to establish workforce retention bonus payments for direct service workers 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 $56,079,816 for state fiscal year 2022-2023. Effective July 31, 2022, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing reimbursement in the NOW in order to establish workforce retention bonus payments for direct service workers along with audit procedures and sanctions.

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

   b. 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.

   c. The minimum hourly wage floor paid to direct service workers shall be $9 per hour.

   d. 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.

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

   2. Establishment of Direct Service Worker Workforce Retention Bonus Payments
      a. Providers providing services on or after April 1, 2021 shall receive bonus payments of $150 per month for each direct service worker that worked with participants for that month. These payments will remain in effect for each month thereafter that the direct service worker works with participants and is still employed with that agency.

      b. The direct service worker providing services on or after April 1, 2021 that worked with participants must receive at least $125 of this $150 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 March 31, 2025 or when the state’s funding authorized under section 9817 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-102) is exhausted.

      d. 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.

      e. – e.ii. Repealed.

   3. Audit Procedures for Direct Service Worker Wage Floor and Workforce Retention Bonus Payments
      a. The wage enhancement and bonus payments reimbursed to providers shall be subject to audit by LDH.

         i. – iv. Repealed.

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

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

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

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

         i. sanctions; or

         ii. disenrollment from the Medicaid Program.

   4. Sanctions for Direct Service Worker Wage Floor and Workforce Retention 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 $125 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 $125 monthly bonus payments;

iii. the persistent failure to pay the floor minimum of $9 per hour and/or the $125 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.

G. ...  

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


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