

NOTICE OF INTENT

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

Home and Community-Based Services Waivers  
Community Choices Waiver  
(LAC 50:XXI.8329 and 8601)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.8329 and §8601 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the Community Choices Waiver to add two new waiver services, to incorporate a new service delivery method, and to clarify the provisions governing personal assistance services (*Louisiana Register*, Volume 40, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the Community Choices Waiver in order to clarify the provisions governing monitored in-home caregiving services and to revise the provisions governing the organized health care delivery system (*Louisiana Register*,

Volume 40, Number 11). This proposed Rule is being promulgated to continue the provisions of the November 20, 2014 Emergency Rule.

**Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE  
Part XXI. Home and Community Based Services Waivers  
Subpart 7. Community Choices Waiver**

**Chapter 83. Covered Services**

**§8329. Monitored In-Home Caregiving Services**

A. Monitored in-home caregiving (MIHC) services are provided by a principal caregiver to a participant who lives in a private unlicensed residence. The principal caregiver shall be contracted by the licensed HCBS provider having a MIHC service module. The principal caregiver shall reside with the participant. Professional staff employed by the HCBS provider shall provide oversight, support and monitoring of the principal caregiver, service delivery, and participant outcomes through on-site visits, training, and daily, web-based electronic information exchange.

B. - B.6. ...

C. Unless the individual is also the spouse of the participant, the following individuals are prohibited from being paid as a monitored in-home caregiving principal caregiver:

1. - 5. ...

D. Participants electing monitored in-home caregiving

services shall not receive the following community choices waiver services during the period of time that the participant is receiving monitored in-home caregiving services:

1. - 3. ...

E. Monitored in-home caregiving providers must be licensed HCBS providers with a monitored in-home caregiving module who employ professional staff, including a registered nurse and a care manager, to support principal caregivers to perform the direct care activities performed in the home. The agency provider must assess and approve the home in which services will be provided, and shall enter into contractual agreements with caregivers who the agency has approved and trained. The agency provider will pay per diem stipends to caregivers.

F. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring participant health and caregiver performance. All protected health information must be transferred, stored, and otherwise utilized in compliance with applicable federal and state privacy laws. Providers must sign, maintain on file, and comply with the most current DHH HIPAA Business Associate Addendum.

1. - 3. Repealed.

G. ...

1. Monitored in-home caregiving services under tier 1 shall be available to the following resource utilization categories/scores as determined by the MDS-HC assessment:

- a. special rehabilitation 1.21;
- b. special rehabilitation 1.12;
- c. special rehabilitation 1.11;
- d. special care 3.11;
- e. clinically complex 4.31;
- f. clinically complex 4.21;
- g. impaired cognition 5.21;
- h. behavior problems 6.21;
- i. reduced physical function 7.41; and
- j. reduced physical function 7.31.

2. Monitored in-home caregiving services under tier 2 shall be available to the following resource utilization categories/scores as determined by the MDS-HC assessment:

- a. extensive services 2.13;
- b. extensive services 2.12;
- c. extensive services 2.11; and
- d. special care 3.12.

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, Bureau of Health Services Financing and the

Office of Aging and Adult Services, LR 40:792 (April 2014),  
amended LR 41:

**Chapter 86. Organized Health Care Delivery System**

**§8601. General Provisions**

A. - C. ...

D. Prior to enrollment, an OHCDS must show the ability to provide all of the services available in the Community Choices Waiver on December 1, 2012, with the exceptions of support coordination, transition intensive support coordination, transition services and adult day health care if there is no licensed adult day health care provider in the service area.

**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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:792 (April 2014), amended LR 41:

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.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on

the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, October 29, 2015 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. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: ZeKeidra Knight  
Phone: 342-6943

Dept.: Health and Hospitals  
Office: Bureau of Health Services  
Financing

Return  
Address: P.O. Box 91030  
Baton Rouge, LA

Rule Title: Home and Community-Based  
Services Waiver  
Community Choices Waiver

Date Rule Takes Effect: November 20, 2014

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

*It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 15-16 for the state's administrative expense for promulgation of this proposed rule and the final rule.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

*It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 15-16. It is anticipated that \$378 will be collected in FY 15-16 for the federal share of the expense for promulgation of this proposed rule and the final rule.*

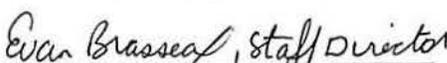
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

*This rule continues the provisions of the November 20, 2014 Emergency Rule which amended the provisions governing the Community Choices Waiver in order to clarify the provisions governing monitored in-home caregiving services and to revise the provisions governing the organized health care delivery system. It is anticipated that the implementation of this proposed rule will have no economic cost or benefits to Community Choices Waiver providers in FY 15-16, FY 16-17, and FY 17-18.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

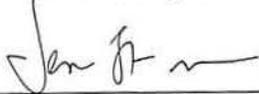
*This rule has no known effect on competition and employment.*

  
\_\_\_\_\_  
Signature of Agency Head  
or Designee

  
\_\_\_\_\_  
Evan Brasseal, Staff Director  
Legislative Fiscal Officer  
or Designee

J. Ruth Kennedy, Medicaid Director  
Typed name and Title of  
Agency Head or Designee

9/10/15  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
DHH/BHSF Budget Head

9/9/15  
\_\_\_\_\_  
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

*This rule continues the provisions of the November 20, 2014 Emergency Rule which amended the provisions governing the Community Choices Waiver to clarify the provisions governing monitored in-home caregiving services and to revise the provisions governing the organized health care delivery system.*

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

*The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the Community Choices Waiver to add two new waiver services, to incorporate a new service delivery method and to clarify the provisions governing personal assistance services (Louisiana Register, Volume 40, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the Community Choices Waiver in order to clarify the provisions governing monitored in-home caregiving services and to revise the provisions governing the organized health care delivery system (Louisiana Register, Volume 40, Number 11). This proposed Rule is being promulgated to continue the provisions of the November 20, 2014 Emergency Rule.*

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

*No. It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16. It is anticipated that \$756 will be expended in FY 15-16 for the state's administrative expense for promulgation of this proposed rule and the final.*

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) \_\_\_\_\_ If yes, attach documentation.  
(b) \_\_\_\_\_ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 15-16	FY 16-17	FY 17-18
PERSONAL SERVICES			
OPERATING EXPENSES	\$756	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
<b>TOTAL</b>	<b>\$756</b>	<b>\$0</b>	<b>\$0</b>

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

*In FY 15-16, \$756 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.*

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	\$378	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$378	\$0	\$0
OTHER (Specify)			
<b>Total</b>	<b>\$756</b>	<b>\$0</b>	<b>\$0</b>

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

*Yes, sufficient funds are available to implement this rule.*

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

*This proposed rule has no known impact on local governmental units.*

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

*There is no known impact on the sources of local governmental unit funding.*

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$378	\$0	\$0
LOCAL FUNDS			
<b>Total</b>	<b>\$378</b>	<b>\$0</b>	<b>\$0</b>

*\*Specify the particular fund being impacted*

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

*In FY 15-16, \$378 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.*

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

*This rule continues the provisions of the November 20, 2014 Emergency Rule which amended the provisions governing the Community Choices Waiver to clarify the provisions governing monitored in-home caregiving services and to revise the provisions governing the organized health care delivery system.*

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

*It is anticipated that the implementation of this proposed rule will have no economic cost or benefits to Community Choices Waiver providers in FY 15-16, FY 16-17, and FY 17-18.*

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

*This rule has no known effect on competition and employment.*