2019 Regular Session

HOUSE BILL NO. 390

BY REPRESENTATIVE WHITE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MEDICAID: Relative to reimbursement rates paid to providers of disability services

AN ACT

To enact Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1250.1 through 1250.31, relative to services for persons with disabilities; to provide relative to Medicaid reimbursement rates paid to such providers by the Louisiana Department of Health; to establish procedures by which the department shall set such rates; to provide for factors and data elements to be utilized in the calculation of such rates; to require that rates meet certain conditions and standards for adequacy; to provide for a rate review process; to require the department to publish online and make available in printed form certain information pertaining to rate-setting; to provide for legislative findings and intent; to provide for definitions; to require administrative rulemaking; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1250.1 through 1250.31, is hereby enacted to read as follows:

PART II-A. DISABILITY SERVICE PROVIDERS: MEDICAID REIMBURSEMENT

SUBPART A. GENERAL PROVISIONS

§1250.1. Short title

This Part shall be known and may be cited as the "Disability Services Medicaid Reimbursement Rate Act".

§1250.2. Legislative findings; declaration

A. The legislature hereby finds all of the following:

(1) Access to quality services for persons with developmental, intellectual, adult-onset, or physical disabilities furnished by private providers is essential for the health, safety, and well being of those persons.

(2) Reliable and sufficient Medicaid reimbursement rates for private providers are necessary to create and maintain a sustainable statewide system of services for eligible individuals with disabilities.

(3) A statewide system of services is sustainable only if reimbursement rates are sufficient to enlist providers in numbers great enough to allow eligible individuals a choice among different providers who are capable of delivering quality services that will meet the assessed needs of those individuals in a timely manner.

B. The legislature hereby declares that this state must take steps to foster and maintain a robust network that attracts and retains quality providers which are capable of maintaining a stable workforce and are sufficient in number to allow for meaningful choices among providers by individuals eligible to receive disability services.

§1250.3. Purposes

The purposes of this Part are to provide for a reliable legal framework to guide the Louisiana Department of Health, or any successor state Medicaid agency, in setting reimbursement rates for providers of disability services for persons with developmental, intellectual, adult-onset, or physical disabilities.

§1250.4. Definitions

As used in this Part, the following terms have the meaning ascribed to them in this Section:

(1) "Department" means the Louisiana Department of Health.

(2) "Direct service worker" means an individual who works directly with a person with a developmental, intellectual, adult-onset, or physical disability to

provide a service or a component of a service as an employee or independent contractor of a provider.

(3) "Methodology" means the aggregate of methods, principles, assumptions, variables, factors, and procedures used to determine a reimbursement rate.

(4) "Person-centered planning process" means a process of planning with a recipient for the identification of needs and coordination and delivery of services that reflect the personal preferences of the recipient.

(5) "Provider" means a person, public agency, nonprofit corporation, or a for-profit business entity that provides services under a contract or other agreement with the department.

(6) "Rate" means the amount of money per unit of time for a Medicaid service performed or the amount of money for a Medicaid service performed for a flat fee, such as a per diem.

(7) "Rebasing" means using cost report information to adjust Medicaid reimbursement rates to the level dictated by the Medicaid reimbursement methodology for each covered service.

(8) "Recipient" means a Medicaid-eligible person with a developmental, intellectual, adult-onset, or physical disability receiving services from the department or a provider.

(9) "Reimbursement" means payment for a Medicaid service in accordance with a specified rate.

(10) "Restructure" means any alteration in the methodology used to determine a rate.

(11) "Service" means a home- or community-based service, intermediate care facility service, or support coordination service provided to a recipient by a provider under a contract or other agreement with the department.

(12) "Service plan" means a plan resulting from the person-centered planning process for the delivery and coordination of specific Medicaid services authorized for a recipient.

(13) "Staff-to-recipient ratio" means a ratio reflecting the number of direct service workers designated to provide a Medicaid service for one or more recipients.

(14) "Stakeholder" means a recipient, a parent or guardian of a recipient, any provider, and any association or organization representing or advocating on behalf of providers, recipients, or parents or guardians of recipients.

SUBPART B. RATE DESIGN AND METHODOLOGY

§1250.11. Rate design

The department shall design all rate-setting processes and methodologies to ensure that recipients have adequate access to services that satisfy all applicable standards and requirements of federal and state law for efficiency, economy, and quality of care. Such rate-setting processes and methodologies shall comply with the procedures, standards, and requirements provided in this Part.

§1250.12. Rate methodology

A. The department shall establish all new rates or changes to rates by a methodology that specifies and describes all factors, procedures, methods, and data used or considered in developing the respective rates, including but not limited to sources and methods of data collection, staff-to-recipient ratios, standards of reliability, formulas, calculations, assumptions, and variables.

B. The department shall design the methodology to ensure that all rates meet the sufficiency standards provided in R.S. 40:1250.14.

C. All data used or relied on in the methodology shall be reliable in accordance with standard principles of data reliability.

D. The department shall ensure that its methodology results in rates that satisfy all of the following conditions:

(1) The rates allow for all recipients to have a choice of quality providers for each service offered.

(2) The rates allow all recipients to access services in a timely manner.

(3) The rates can be incorporated consistently in fee-for-service Medicaid, Medicaid 1915(c) waivers, and Medicaid managed care programs.

E. The department shall consider payment structures that ensure quality and value and improve adequacy, access, and sufficiency.

F. In connection with its design and implementation of the rate methodology required in this Section, the department shall develop a reporting system that disaggregates data by geography and demography and features specific information on access to services for population subgroups including, without limitation, people with developmental, intellectual, adult-onset, or physical disabilities.

§1250.13. Cost data; requirements

All rates shall be set based on reliable data of the actual or reasonably estimated costs of providing the service to be reimbursed. Such costs shall include, as applicable to the rate, all employee wages, benefits, qualifications, and training costs; staff-to-recipient ratios; equipment and vehicle costs; and costs of operating, maintaining, and managing a residential setting including taxes, administrative costs, and overhead costs, but excluding unreimbursed room and board costs.

§1250.14. Rate uniformity

Rates for similar services and supports shall be uniform in order to ensure that all providers receive the same rate for the same service for individuals with the same or similar needs, subject to reasonable adjustments for documented geographic variations in cost data.

§1250.15. Rate implementation; conditions

Implementation of any new Medicaid reimbursement methodology as defined in this Part shall be contingent upon approval by the Centers for Medicare and Medicaid Services and the Joint Legislative Committee on the Budget. Additionally, the department shall not implement any new Medicaid reimbursement rate developed pursuant to the provisions of this Part unless the legislature makes a specific appropriation for such purpose.

SUBPART C. MONITORING AND RATE ADJUSTMENT

§1250.21. Monitoring for adequacy and quality of services

A. The department shall maintain reliable data in a form that permits ongoing monitoring of trending factors that may affect the sufficiency of rates. Such factors may include, without limitation, trends in cost of living and other economic indexes, wage rates, and changes in regulatory and policy requirements affecting provider costs.

B. The department may require reasonable, periodic financial reports from providers as needed to ensure the availability of reliable cost data. The department shall consult and collaborate with providers to develop reasonable financial reporting requirements.

§1250.22. Annual review of rates

The department may conduct annual reviews of all rates by service category and shall make a determination of the level of sufficiency of each rate based on a review of all pertinent data.

SUBPART D. RULEMAKING

§1250.31. Administrative rulemaking; limitation on emergency rules

A. The department shall promulgate all such rules in accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Part.

B. Except in cases in which the conditions for adoption of an emergency rule provided in R.S. 49:953(B)(1)(a) are satisfied, the department shall promulgate all rules for implementation of the provisions of this Part through the notice process provided for in R.S. 49:953(A).

Section 2.(A) The Louisiana Department of Health shall provide a written report concerning disability service provider rates to the House Committee on Appropriations, the Senate Committee on Finance, and the legislative committees on health and welfare no later than forty-five days prior to the convening of the 2020 Regular Session of the Legislature of Louisiana. The report shall include, without limitation, all of the following information:

(1) Any changes within the previous twelve months to the Medicaid rate methodology for services provided for in Part II-A of Chapter 5-E of Title 40 of the

Louisiana Revised Statutes of 1950, as enacted by Section 1 of this Act, and the current Medicaid rates for those services.

(2) The date of the last rebasing of Medicaid rates for intermediate care facilities for people with developmental disabilities and any future dates on which those rates are due to be rebased.

(3) The amount of funding that would be required for an annual adjustment, based on the inflation index, to the Medicaid rates for services provided for in Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of 1950, as enacted by Section 1 of this Act.

(4) The health market basket inflation index used in calculating the amount of funding that would be needed for an annual adjustment of Medicaid rates for services provided for in Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of 1950, as enacted by Section 1 of this Act.

(5) Any proposed changes to the methodology for determining Medicaid rates for services provided for in Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of 1950, as enacted by Section 1 of this Act.

(B) Upon request of any legislative committee identified in this Section, the secretary of the Louisiana Department of Health or his designee shall appear in person before the committee to present the report required by this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 390 Engrossed 2019 Regular Session White

Abstract: Requires the La. Department of Health to develop Medicaid reimbursement rates paid to providers of disability services according to certain guidelines.

Proposed law provides that its purpose is to provide for a reliable legal framework to guide the La. Department of Health (LDH) in setting reimbursement rates for providers of disability services for persons with developmental, intellectual, adult-onset, or physical disabilities.

Proposed law requires LDH to design all processes and methodologies for setting Medicaid reimbursement rates for providers of disability services to ensure that service recipients have adequate access to services that satisfy all applicable standards and requirements of federal and state law for efficiency, economy, and quality of care.

Proposed law requires LDH to establish all new rates or changes to rates by a methodology that specifies and describes all factors, procedures, methods, and data used or considered in developing the respective rates, including but not limited to sources and methods of data collection, staff-to-recipient ratios, standards of reliability, formulas, calculations, assumptions, and variables. Stipulates that all data used or relied on in the methodology shall be reliable in accordance with standard principles of data reliability.

Proposed law requires LDH to ensure that its methodology results in rates that satisfy all of the following conditions:

(1) The rates allow for all recipients to have a choice of quality providers for each service offered.

(2) The rates allow all recipients to access services in a timely manner.

(3) The rates can be incorporated consistently in fee-for-service Medicaid, Medicaid 1915(c) waivers, and Medicaid managed care programs.

Proposed law requires LDH to consider payment structures that ensure quality and value and improve adequacy, access, and sufficiency.

Proposed law provides that in connection with its design and implementation of the rate methodology required in proposed law, LDH shall develop a reporting system that disaggregates data by geography and demography and features specific information on access to services for population subgroups including, without limitation, people with developmental, intellectual, adult-onset, or physical disabilities.

Proposed law requires all rates to be set based on reliable data of the actual or reasonably estimated costs of providing the service to be reimbursed. Provides that such costs shall include, as applicable to the rate, all employee wages, benefits, qualifications, and training costs; staff-to-recipient ratios; equipment and vehicle costs; and costs of operating, maintaining, and managing a residential setting including taxes, administrative costs, and overhead costs, but excluding unreimbursed room and board costs.

Proposed law requires that rates for similar services and supports shall be uniform in order to ensure that all providers receive the same rate for the same service for individuals with the same or similar needs, subject to reasonable adjustments for documented geographic variations in cost data.

Proposed law stipulates that implementation of any new Medicaid reimbursement methodology shall be contingent upon approval by the Centers for Medicare and Medicaid Services and the Joint Legislative Committee on the Budget. Prohibits LDH from implementing any new Medicaid reimbursement rate pursuant to proposed law unless the legislature makes a specific appropriation for such purpose.

Proposed law requires LDH to maintain reliable data in a form that permits ongoing monitoring of trending factors that may affect the sufficiency of rates such as trends in cost of living and other economic indexes, wage rates, and changes in regulatory and policy requirements affecting provider costs.

Proposed law authorizes LDH to require reasonable, periodic financial reports from providers as needed to ensure the availability of reliable cost data. Requires LDH to consult and collaborate with providers to develop reasonable financial reporting requirements.

Proposed law authorizes LDH to conduct annual reviews of all rates by service category and make a determination of the level of sufficiency of each rate based on a review of all pertinent data.

Proposed law requires LDH to provide a written report concerning disability service provider rates to the House Committee on Appropriations, the Senate Committee on Finance, and the legislative committees on health and welfare no later than 45 days prior to the convening of the 2020 R.S. Specifies content that the department shall include in the report.

(Adds R.S. 40:1250.1-1250.31)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Revise the short title of proposed law to provide that it shall be known as the "Disability Services Medicaid Reimbursement Rate Act".

2. Delete legislative finding from proposed law indicating that, historically, instabilities in provider networks and systems of services in various states resulted in decades of litigation in federal courts challenging reimbursement rates set by state Medicaid agencies for providers of disability services.

3. Delete proposed law providing that its intent is to supplement the requirements of Medicaid law applicable to reimbursement rates for services provided to persons with disabilities.

4. Delete provisions relative to construction of proposed law.

5. Replace all instances of "age-related disability" with "adult-onset disability".

6. Replace all instances of "direct support professional" with "direct service worker".

7. Replace all instances of "personal planning" with "person-centered planning".

8. Specify that certain services and reimbursement rates referred to in proposed law are Medicaid services and reimbursement rates.

9. Delete proposed law requiring the La. Department of Health (LDH) to consider innovative rate and payment structures designed to promote improvements in quality, adequacy, access, and sufficiency, and develop measures to assess the effectiveness of such rate and payment structures.

10. Revise proposed law relative to establishment of rate methodologies to require that LDH establish all new rates or changes to rates by a methodology that specifies and describes all factors, procedures, methods, and data used or considered in developing the respective rates.

11. Delete proposed law stipulating that no cost data that is more than two years old shall be deemed reliable.

12. Delete proposed law requiring LDH to ensure that its rates for disability services satisfy the following conditions:

    (a) The rates allow services to be provided in the most integrated setting for recipients, consistent with the holdings of the Supreme Court in

Olmstead v. L.C., 527 U.S. 581 (1999), and the Americans with Disabilities Act.

(b) The rates are sufficient to enlist a range of willing providers who are able to retain a qualified and stable workforce and take into account all other applicable workforce measures provided in proposed law.

(c) The rates are subject to a review process that includes input from stakeholders and assesses the adequacy of access to services financed by the rates.

13. Stipulate that the LDH rates for disability services be developed such that they can be incorporated consistently in Medicaid 1915(c) waivers and Medicaid managed care programs.

14. Stipulate that implementation of any new Medicaid reimbursement methodology shall be contingent upon approval by the Centers for Medicare and Medicaid Services and the Joint Legislative Committee on the Budget.

15. Prohibit LDH from implementing any new Medicaid reimbursement rate pursuant to proposed law unless the legislature makes a specific appropriation for such purpose.

16. Delete requirement that LDH maintain reliable data in a form that permits ongoing monitoring of certain factors that may be indicators of the adequacy of access to and quality of services that are subject to reimbursement rates.

17. Delete a requirement that LDH conduct annual review of all rates by service category and instead authorize the department to conduct such reviews.

18. Delete requirements that LDH do the following:

(a) Rebase rates at least once every two years using the most recent audited cost report data available per the prescribed reimbursement methodology calculations for each covered service.

(b) Trend reimbursement rates forward annually for all years between rate rebasing using the appropriate health market basket inflation index.

19. Revise reporting requirements provided in proposed law to require that LDH provide a written report concerning disability service provider rates to the House Committee on Appropriations, the Senate Committee on Finance, and the legislative committees on health and welfare no later than 45 days prior to the convening of the 2020 R.S., and to specify the content of the report.

20. Make technical changes.