

2019 Regular Session

HOUSE BILL NO. 390

BY REPRESENTATIVES WHITE, AMEDEE, BACALA, BILLIOT, TERRY BROWN, CARMODY, GARY CARTER, CHANEY, COX, HILL, HOFFMANN, JACKSON, JEFFERSON, JENKINS, ROBERT JOHNSON, LARVADAIN, LYONS, POPE, SIMON, STAGNI, AND THOMAS

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

1 AN ACT

2 To enact Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 40:1250.1 through 1250.21, relative to Medicaid-funded  
4 disability services; to provide for an annual report concerning such services; to  
5 provide for data to be included in the report; to provide for submission of the report  
6 to certain legislative committees; to provide for definitions; and to provide for  
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part II-A of Chapter 5-E of Title 40 of the Louisiana Revised Statutes of  
10 1950, comprised of R.S. 40:1250.1 through 1250.21, is hereby enacted to read as follows:

11 PART II-A. DISABILITY SERVICES: REPORTING

12 SUBPART A. GENERAL PROVISIONS

13 §1250.1. Short title

14 This Part shall be known and may be cited as the "Disability Services  
15 Sustainability Act".

16 §1250.2. Legislative findings; declaration

17 A. The legislature hereby finds all of the following:

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

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

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

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

16          §1250.3. Definitions

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

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

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

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

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



1 of Louisiana. The report shall include, without limitation, all of the following  
 2 information:

3 (1) Any changes within the previous twelve months to the Medicaid rate  
 4 methodology for disability services and the current Medicaid rates for those services.

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

8 (3) The amount of funding that would be required for an annual adjustment,  
 9 based on the inflation index, to Medicaid rates for disability services.

10 (4) The health market basket inflation index used in calculating the amount  
 11 of funding that would be needed for an annual adjustment of Medicaid rates for  
 12 disability services.

13 (5) Any proposed changes to the methodology for determining Medicaid  
 14 rates for disability services.

15 B. Upon request of any legislative committee identified in this Section, the  
 16 secretary of the department or his designee shall appear in person before the  
 17 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 Reengrossed

2019 Regular Session

White

**Abstract:** Requires the La. Department of Health to monitor and report to the legislature on Medicaid reimbursement rates paid to providers of Medicaid-funded services for people with disabilities.

Proposed law requires the La. Department of Health (LDH) to maintain reliable data in a form that permits ongoing monitoring of trending factors that may affect the sufficiency of reimbursement rates paid to providers of Medicaid-funded services for people with disabilities.

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

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

Proposed law requires LDH to provide a written report concerning Medicaid reimbursement rates for disability service providers 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 each regular session of the legislature. Specifies content that the department shall include in the report.

(Adds R.S. 40:1250.1-1250.21)

#### 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.

The House Floor Amendments to the engrossed bill:

1. Change the short title of proposed law from the "Disability Services Medicaid Reimbursement Rate Act" to the "Disability Services Sustainability Act".
2. Delete proposed law indicating that its purpose is to provide for a reliable legal framework to guide the La. Department of Health (LDH), 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.

3. Delete the defined terms "direct service worker", "person-centered planning process", "recipient", "restructure", "service plan", "staff-to-recipient ratio", and "stakeholder" and their corresponding definitions.
4. Delete all provisions of proposed law relative to the design and establishment of a reimbursement rate methodology.
5. Revise proposed law relative to reporting to require that LDH submit an annual 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 each regular session of the legislature.