

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
New Opportunities Waiver
Emergency Opportunities
(LAC 50:XXI.13709)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.13709 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 for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the allocation of waiver opportunities in the New Opportunities Waiver (NOW) to revise the criteria for emergency waiver services, simplify the allocation process for NOW emergency opportunities, and facilitate faster access to NOW emergency services for qualified individuals (*Louisiana Register*, Volume 41, Number 9).

The department subsequently promulgated an Emergency Rule to rescind the October 1, 2015 Emergency Rule in order to

return to the provisions in place governing the allocation of waiver opportunities for the NOW located in LAC 50:XXI.13709 (*Louisiana Register*, Volume 42, Number 1).

The department has now determined that it is necessary to amend the provisions governing the allocation of waiver opportunities in the NOW to revise the criteria for emergency opportunities, simplify the allocation process for NOW emergency opportunities and facilitate faster access to NOW emergency services for qualified individuals.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13709. Emergency Opportunities

A. Requests for emergency waiver services shall be made through the local ~~governmental governing~~ entities (LGEs) ~~(human services districts or human services authorities)~~ responsible for coordination of services for persons with developmental disabilities. When a request for emergency services is received, the ~~human services district or human services authority~~LGE shall complete a ~~priority assessment~~ standardized screening tool that incorporates standardized operational procedures ~~with standardized assessment tools~~ to determine the priority of the individual's urgency of need in a fair and

consistent manner.

B. To be considered for emergency waiver supports, the individual must need long-term supports, not temporary or short-term supports. ~~All of the following criteria shall be used in the determination of priority for an emergency waiver opportunity.~~

~~1. Urgency of Need. The individual will require further assessment for emergency services if one of the following situations exists:~~

~~a. the caregiver is unable or unwilling to continue providing care;~~

~~b. death of the caregiver and there are no other available supports;~~

~~c. the caregiver is incapacitated and there are no other available supports due to physical or psychological reasons;~~

~~d. intolerable temporary placement, immediate need for new placement; or~~

~~e. other family crisis exists with no caregiver support available.~~

~~2. Level of Risk. The individual will be assessed to determine the risk to his/her health and safety in areas of daily living, health care and behavioral supports if an~~

~~emergency waiver opportunity is not made available. Level of risk will be categorized as follows.~~

~~a. High Risk. The person's health or safety is at imminent risk without the requested developmental disability supports.~~

~~b. Moderate Risk. The person has a potential risk of losing his/her current level of health or safety without the requested developmental disability supports.~~

~~c. Low Risk. The person is at little or no risk of losing his/her current level of health or safety without the requested developmental disability supports.~~

~~3. Level of Unmet Needs. The person's needs shall be identified and assessed to determine the level to which the needs are being met.~~

~~4. Adaptive Service Level Determination. The person's service needs will be determined utilizing a standardized rating based on adaptive behavior levels.~~

~~5. Financial Resources Determination. Individual or family income shall be considered to determine whether it is adequate to meet unmet needs.~~ 1. - 5. Repealed.

C. Effective Ffor dates of service on or after September 20, 2016, an individuals ~~who appear to~~ must meet the required criteria within the OCDD standardized screening tool in order to qualify for ~~an~~ emergency waiver ~~opportunity,~~ services ~~the RAU~~

~~will forward the Priority Ranked Score and all supporting documentation to the DHH emergency review team coordinator at OCDD in Baton Rouge to complete the programmatic determination process.~~

1. Documentation that any one of the following criteria within the OCDD standardized screening tool has been met will qualify an individual for an emergency waiver opportunity:

a. the caregiver is no longer able to provide support and the individual's health and/or safety is placed at risk;

b. the individual has no other support available after the death of a caregiver;

c. the caregiver needs immediate assistance to provide support and maintain the individual's current living situation;

d. the individual has been placed in custody and, as a result, requires essential, community-based supports;

e. the individual requires long term care supports to address imminent risk of incarceration;

f. the individual needs immediate supports to stay in his/her own home;

g. intolerable conditions exist within the residence with an immediate need for a new residential option;

h. the individual's eligibility will expire and/or the individual "ages out" of the program or funding source providing essential supports within the next 90 days; and

i. additional supports are needed to ensure health and safety and/or to keep the individual from being placed in an institutional situation.

D. For individuals who meet the criteria for an emergency waiver opportunity, as determined by the OCDD standardized screening tool, the LGE will forward copies of all documentation used for determination of eligibility for NOW emergency services, including the standardized screening tool, to the appropriate DHH emergency review manager at OCDD.

1. OCDD will verify each qualifying applicant's request for services registry (RFSR) date and assign waiver opportunities in order, based on their protected RFSR dates.

2. In instances when there are more requests than available emergency waiver opportunities, qualifying individuals who have the earliest protected request dates on the NOW RFSR will receive their opportunities first.

3. If there are more applicants than available emergency waiver opportunities, those individuals may reapply when additional emergency waiver opportunities become available.

E. The LGE will keep all of the supporting documentation used to determine whether an applicant has met emergency waiver

criteria.

F. Individuals who do not meet the criteria and are denied an emergency waiver opportunity have the right to an administrative appeal.

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, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1201 (November 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:71 (January 2014), LR 42:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will allow individuals and families in crisis to obtain faster access to necessary services.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by allowing families to obtain emergency services faster which may reduce their financial burden if they are incurring costs for services initially.

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, July 28, 2016 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.

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Secretary