

NOTICE OF INTENT

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

**Medicaid Eligibility
Act 421 Children's Medicaid Option
(LAC 50:III.2331)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:III.2331 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.

Act 421 of the 2019 Regular Session of the Louisiana Legislature directed the Department of Health to establish the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) option within the Medical Assistance Program through which children with disabilities can access Medicaid-funded services regardless of their parents' income. In compliance with Act 421, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions that established the Act 421 Children's Medicaid Option (TEFRA). The department now proposes to amend the provisions governing Medicaid eligibility groups and programs in

order to remove the requirement that an applicant be ineligible for other Medicaid services before being considered for the Act 421 Children's Medicaid Option and to revise language regarding level of care.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part I. Administration
Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2331. Act 421 Children's Medicaid Option (Act 421-CMO/TEFRA/Katie Beckett)

A. ~~General Provisions~~ Pursuant to section 1902(e)(3) of the Social Security Act the state may extend Medicaid eligibility to certain children living in the community, who require the level of care provided in an institution, and who would be eligible for Medicaid if living in an institution.

~~1. Pursuant to section 1902(e)(3) of the Social Security Act the state may extend Medicaid eligibility to certain children living in the community, who require the level of care provided in an institution, and who would be eligible for Medicaid if living in an institution.~~

~~2. Effective January 1, 2022, the department implements the Act 421 Children's Medicaid Option (421-CMO) program to provide Medicaid State Plan services to children with disabilities who meet the eligibility criteria set forth in this~~

~~Section, despite parental or household income and resources that would otherwise exclude them from Medicaid eligibility~~1. - 2.

Repealed.

B. ~~Eligibility Requirements. In order to qualify for~~
Effective January 1, 2022, the department implemented the Act
421 Children's Medicaid Option (Act 421-CMO) program to provide
Medicaid State Plan services to children with disabilities who,
despite parental or household income and resources, an
~~individual must meet both programmatic and clinical~~the
eligibility ~~requirements~~criteria set forth ~~herein~~in this
Section.

~~1. Programmatic Eligibility Requirements. In order to be eligible for the 421 CMO program, an individual must meet all of the following criteria:~~

~~a. is 18 years of age or younger (under 19 years of age);~~

~~b. is a U.S. citizen or qualified non citizen;~~

~~c. is a Louisiana resident;~~

~~d. has or has applied for a Social Security Number;~~

~~e. has countable resources that are equal to or less than the resource limits for the Supplemental Security Income (SSI) program;~~

~~_____ i. only the applicant/421 CMO enrollee's resources shall be considered in determining eligibility for the 421 CMO program;~~

~~_____ f. has countable income equal to or less than the special income level for long term care services (nursing facility, ICF/IID, and home and community-based services);~~

~~_____ i. only the applicant/421 CMO enrollee's income shall be considered in determining eligibility for the 421 CMO program;~~

~~_____ g. has care needs that can be safely met at home at a lower cost than the cost of services provided in an institutional setting; and~~

~~_____ h. is not otherwise eligible for Medicaid or CHIP.~~

~~_____ 2. Clinical Eligibility Requirements. In order to be eligible for the 421 CMO program, an individual must meet all of the following criteria:~~

~~_____ a. qualifies as a disabled individual under section 1614(a) of the Social Security Act;~~

~~_____ b. requires a level of care, assessed on an annual basis, provided in an intermediate care facility for individuals with intellectual disabilities (ICF/IID), a nursing facility, or a hospital;~~

~~i. an individual meets ICF/IID level of care when he/she:~~

~~(a). has obtained a statement of approval from the Office for Citizens with Developmental Disabilities or its designee, confirming that he/she has a developmental disability as defined in R.S. 28:451.2; and~~

~~(b). meets the requirements for active treatment of a developmental disability under the supervision of a qualified developmental disability professional, as prescribed on Form 90-L;~~

~~ii. an individual meets nursing facility level of care when he/she demonstrates one of the following two standards, assessed in accordance with the Act 421 children's Medicaid option assessment tool:~~

~~(a). Standard I~~

~~(i). the need for skilled nursing and/or therapeutic interventions on a regular and sustained basis; and~~

~~(ii). substantial functional limitations as compared to same age peer group in two of the following areas: learning, communication, self care, mobility, social competency, money management (for children 18 and older), work, and meal preparation;~~

~~(b). Standard II~~

~~(i). substantial functional limitations as compared to same age peer group in four of the following areas: learning, communication, self care, mobility, social competency, money management (for children 18 and older), work, and meal preparation;~~

~~iii. an individual meets hospital level of care when he/she demonstrates the following, assessed in accordance with the Act 421 children's Medicaid Option assessment tool;~~

~~(a). the need for frequent and complex medical care that requires the use of equipment to prevent life-threatening situations, with skilled medical care required multiple times during each 24 hour period;~~

~~(b). the need for complex skilled medical interventions that are expected to persist for at least six months; and~~

~~(c). an overall health condition that is highly unstable and presents constant potential for complications or rapid deterioration, with the result that he/she requires continuous assessment by professional nurses, parents, or other properly instructed individuals, in order to detect unstable and life-threatening conditions and respond promptly with appropriate care~~1. - 2.b.iii(c). Repealed.

C. ~~Ineligibility for Services~~Eligibility Criteria. In order to qualify for the 421-CMO program, an applicant/Act 421-CMO beneficiary must meet all of the following criteria:

1. ~~421-CMO enrollees shall be terminated from the 421-CMO program if admitted to an ICF/IID, nursing facility, is 18 years of age or hospital without the intent to return to 421-CMO services.~~younger (under 19 years of age);

~~a. A 421-CMO enrollee is deemed to intend to return to 421-CMO services when documentation is received from the treating physician that the admission is temporary and shall not exceed 90 days~~

~~b. The 421-CMO enrollee will be discharged from the 421-CMO program on the ninety first day after admission if the 421-CMO enrollee is still in the ICF/IID, nursing facility, or hospital~~a. - b. Repealed.

2. is a U.S. citizen or qualified non-citizen;

3. is a Louisiana resident;

4. has countable resources that are equal to or less than the resource limits for the Supplemental Security Income (SSI) program;

5. has countable income equal to or less than the special income level for long-term care services (nursing facility, ICF/IID, and home and community-based services);

6. qualifies as a disabled individual under section 1614(a) of the Social Security Act;

7. must meet a level of care, assessed on an annual basis, provided in an intermediate care facility for individuals with intellectual disabilities (ICF/IID), a nursing facility, or a hospital; and

8. care needs are being safely met at home at a lower cost than the cost of services provided in an institutional setting.

D. ~~Cost Effectiveness~~Act 421 Children's Medicaid Option (Act 421-CMO/TEFRA) Levels of Care

1. ~~On an annual basis, each~~The individual meets Act 421-CMO ~~enrollee's expenditures will be measured against the average cost~~ICF/IID level ~~of care in an institution that corresponds to his/her level of care (i.e. hospital, ICF/IID, nursing facility) to ensure that home and community-based care is more cost effective than institutional care.~~when demonstrating both of the following:

a. has obtained a statement of approval from the Office for Citizens with Developmental Disabilities, or its designee, or EarlySteps eligibility (depending on age) confirming that he/she has a developmental disability as defined in R.S. 28:451.2; and

b. meets the requirements for active treatment of a developmental disability under the supervision of a qualified developmental disability professional, as prescribed on the Request for Medical Eligibility Determination, Form 90-L.

2. The individual meets Act 421-CMO nursing facility level of care when demonstrating both of the following, assessed in accordance with the Act 421 Children's Medicaid Option assessment tool:

a. has a diagnosis of a medical/physical condition resulting in needs requiring long term care services of at least six months; and

b. requires skilled nursing interventions and/or has substantial functional limitations (SFLs) requiring hands-on assistance from others throughout the day.

3. The individual meets hospital level of care when demonstrating all of the following, assessed in accordance with the Act 421 Children's Medicaid Option assessment tool:

a. the need for frequent medical care that requires the use of equipment to prevent life-threatening situations, with skilled medical care required more than once during each 24-hour period;

b. the need for skilled medical interventions that are expected to persist for at least six months; and

c. an overall health condition that is unstable, presenting the constant potential for complications or rapid deterioration, such that he/she requires monitoring by professional nurses, parents, or other properly instructed individuals, in order to detect unstable and life-threatening conditions and respond promptly with appropriate care.

E. Cost Effectiveness

1. On an annual basis, each 421-CMO beneficiary's expenditures will be measured against the average cost of care in an institution that corresponds to his/her level of care (i.e. hospital, ICF/IID, nursing facility) to ensure that home and community-based care is more cost effective than institutional care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1872 (December 2021), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 49:

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.

Family Impact Statement

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 and autonomy as described in R.S. 49:972.

Poverty Impact Statement

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, since applicants will not be required to be considered for buy-in programs prior to consideration for Act 421-CMO.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

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.

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 proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 30, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on May 10, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 25, 2023 in Room 118 of the

Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after May 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo

LDH Secretary