

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
And
Office of Aging and Adult Services**

**Home and Community-Based Services Waivers
Community Choices Waiver
Resource Assessment and Allocation Process
(LAC 50:XXI.8107)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.8107 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 Office of Aging and Adult Services (OAAS) currently uses an updated version of the uniform international resident assessment instrument (interRAI) tool to determine nursing facility level of care for OAAS programs. The Department of Health, Bureau of Health Services Financing and OAAS propose to amend the provisions governing the resource assessment and allocation process in the Community Choices Waiver in order to update the language regarding interRAI assessments.

**Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 7. Community Choices Waiver**

Chapter 81. General Provisions

§8107. Resource Assessment and Allocation Process

A. Each ~~community choices waiver~~ Community Choices Waiver applicant/participant shall be assessed using the uniform international resident assessment instrument (interRAI) ~~designed.~~ This assessment provides researched and validated measures of an individual's functional status. The assessment is used to verify that if an individual meets nursing facility level of care and to assess multiple key domains of function, health, social support and service use. The interRAI assessment generates a resource utilization group (RUG) score that assigns the individual to a resource utilization group (RUG-III/HC). This score is used to establish an individual's services and supports budget.

B. The ~~following seven primary RUG-III/HC categories and subcategories~~ score assigns an individual to one of 23 distinct groups in seven major groupings. Individuals are assigned to a group based on a hierarchy and are assigned to the highest group for which they qualify. The following seven major groupings will be utilized to determine the waiver assistance needed ~~for to~~ complete various activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

1. Special Rehabilitation. Individuals in this ~~category have~~ group had at least 120 minutes of rehabilitation

therapy (physical, occupational and/or speech) within the seven days prior to ~~their~~the interRAI assessment.

2. Extensive Services. Individuals in this ~~category~~ ~~have a medium to high level of need for assistance with ADLs and require~~group received one or more of the following services and have an ADL index of 7 or more:

- a. tracheostomy;
- b. ventilator or respirator; ~~or~~
- c. suctioning; i
- d. parenteral/IV feeding only;
- e. combined oral and parenteral/tube feeding;
- or
- f. IV medications.

3. Special Care. Individuals in this ~~category have a medium to high level of need for assistance with ADLs and have~~ group must meet one ~~or more~~ of the following ~~conditions or require one or more of the following treatments~~ criteria:

- a. ~~stage 3 or 4 pressure ulcers;~~ have one of the following conditions or treatments and have an ADL index of 7 or greater:
 - i. stage 3 or 4 pressure ulcers and turning/positioning program;
 - ii. combined oral and parenteral/tube feeding or nasogastric feeding only and aphasia;

iii. fever with either vomiting, weight loss, dehydration, nasogastric tube or parenteral feeding, or pneumonia; or

iv. radiation therapy; or

b. ~~tube feeding;~~ have one of the following conditions and have an ADL index of 10 or greater:

i. cerebral palsy;

ii. multiple sclerosis;

iii. quadriplegia; or

c. ~~multiple sclerosis diagnosis;~~ are receiving one of the extensive care services (as listed in B.2 above) and have an ADL index of 6 or less.

~~d. quadriplegia;~~

~~e. burn treatment;~~

~~f. radiation treatment;~~

~~g. intravenous (IV) medications; or~~

~~h. fever and one or more of the following conditions:~~

~~i. dehydration diagnosis;~~

~~ii. pneumonia diagnosis;~~

~~iii. vomiting; or~~

~~iv. unintended weight loss.~~ d. - h.iv.

Repealed.

4. Clinically Complex. Individuals in this ~~category~~
group have one of the following ~~specific clinical diagnoses or~~
~~require the specified~~ conditions or treatments:
- a. ~~dehydration~~septicemia;
 - b. ~~any stasis ulcer. A stasis ulcer is a~~
~~breakdown of the skin caused by fluid build-up in the skin from~~
~~poor circulation~~dehydration;
 - c. ~~end-stage/terminal illness~~hemiplegia and an
ADL index of 10 or greater;
 - d. ~~chemotherapy~~pneumonia;
 - e. ~~blood transfusion~~end-stage disease;
 - f. ~~skin problem~~comatose (confirmed by totally
dependent in the four ADLs used in the ADL index);
 - g. ~~cerebral palsy diagnosis~~foot problems that
limit/prevent walking;
 - h. ~~urinary tract infection~~gastrointestinal (GI)
or genitourinary (GU) bleeding;
 - i. ~~hemiplegia diagnosis. Hemiplegia diagnosis~~
~~shall include a total or partial inability to move, experienced~~
~~on one side of the body, caused by brain disease or~~
~~injury~~diabetes;
 - j. ~~dialysis treatment~~combined oral and
parenteral/tube feeding or nasogastric tube feeding only;
 - k. ~~diagnosis of pneumonia~~chemotherapy;

1. ~~one or more of the eight criteria in special care (with low ADL need)~~dialysis; ~~or~~

m. ~~one or more of the three criteria in extensive services (with low ADL need)~~transfusions;

n. oxygen therapy; or

o. one of the special care conditions or treatments listed in 3.a above and an ADL index of 6 or less.

5. Impaired Cognition. Individuals in this ~~category~~group have a ~~low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short term memory loss, trouble in decision making, difficulty in making themselves understood by others and difficulty in eating~~ performance scale of 3 or more and an ADL index of 10 or less.

6. Behavior Problems. Individuals in this ~~category~~group have a ~~low to medium need for assistance with ADLs and~~ one or more of the following behavior problems. ~~This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.~~ and an ADL index of 10 or less:

a. wandering;

b. verbally abusive;

c. physically abusive;

d. socially inappropriate/disruptive;

e. resists care;

f. sexually inappropriate;

g. hallucinations; or

h. delusions.

7. ~~Reduced~~ Physical Function. ~~Persons in this category do~~ Individuals who did not meet the criteria ~~in one of the previous six~~ for any of the previous categories.

C. Based on the RUG ~~III/HC~~ score, the applicant/participant is assigned to ~~a level of support category~~ one of the distinct groups and is eligible for a set annual services budget associated with that ~~level~~ group.

1. If the applicant/participant disagrees with ~~his/her~~ their annual services budget, ~~the applicant/participant~~ they or ~~his/her~~ their responsible representative may request a fair hearing to appeal the decision.

2. The applicant/participant may qualify for an increase in the annual services budget amount upon showing that:

a. one or more ~~answers~~ responses on the assessment are ~~incorrect as~~ recorded ~~on the assessment~~ incorrectly (except for the ~~answers~~ responses in the identification information, personal intake and initial history, assessment date and reason, and/or signature sections); or

b. ~~he/she needs~~they need an increase in the annual services budget to avoid entering into a nursing facility.

D. Each ~~community choices waiver~~Community Choices Waiver participant shall be re-assessed at least annually.

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 37:3518 (December 2011), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1896 (October 2018), 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 no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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 1, 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 April 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 April 27, 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 April 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.

Dr. Courtney N. Phillips

Secretary