

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
New Opportunities Waiver
Allocation of Waiver Opportunities
(LAC 50:XXI.Chapter 137)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.Chapter 137 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the allocation of waiver opportunities in the New Opportunities Waiver (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 (*Louisiana Register*, Volume 42, Number 9).

The department now proposes to amend the provisions governing the NOW in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers and is centered on needs-based

assessments and person-centered planning; 2) change the participant age requirement; 3) address and define priority groups; 4) require that a NOW opportunity be allocated only when other OCDD Waivers will not support the participant; 5) eliminate the inactive status for NOW registry; and 6) eliminate reserve capacity groups.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13703. Participant Qualifications and Admissions Criteria

A. In order to qualify for a New Opportunities Waiver (NOW), an individual must be 21 years of age or older and meet all of the following criteria:

1. have an intellectual and/or developmental disability as specified in R.S. 28:451.2;
2. be deemed eligible for developmental disability services and be on the intellectual/developmental disabilities (IDD) request for services registry (RFSR), unless otherwise specified through programmatic allocation in §13707;
3. - 5. ...
6. have justification, based on a uniform needs-based assessment and a person-centered planning discussion that the NOW is the only OCDD Waiver that will meet the needs of the individual;

7. ...

8. be a citizen of the United States or a qualified immigrant.

B. Individuals under the age of 21 who receive NOW services prior to promulgation of this final Rule will be grandfathered-in to the NOW program. Individuals under the age of 21 who are transitioning to NOW services within 90 days of promulgation of this final Rule will retain their NOW offer and be allowed to transition to the NOW program.

C. Individuals age 18 through 20 may be offered a funded NOW opportunity if the results of the uniform needs-based assessment and person-centered planning discussion determine that the NOW is the most appropriate waiver. These offers must be approved by the OCDD assistant secretary/designee.

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 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:96 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

§13704. Needs Based Assessment

A. A uniform needs-based assessment in conjunction with person-centered planning is utilized in the service planning process for the individuals receiving or participating in an OCDD waiver. The results of this assessment activity shall be utilized to determine which OCDD waiver will be offered to the individual during the initial plan of care process.

1. The participant or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the specific OCDD waiver offered as a result of the needs based assessment and person-centered planning process. If the participant disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

2. - 4. Repealed.

B. The needs-based assessment instrument(s) is designed to evaluate the practical support requirements of individuals with developmental disabilities in daily living, medical and behavioral areas, including:

1. home living;
2. community living;
3. lifelong learning;
4. employment;
5. health and safety;
6. social activities; and
7. protection and advocacy.

C. The needs-based assessment instrument(s) is also used to evaluate the individual's support needs based on information and data obtained from four areas of the person's life, which includes:

1. support needs measurements including:
 - a. material support;
 - b. vision related supports;
 - c. hearing related supports;
 - d. supports for communicating needs;
 - e. positive behavior supports;
 - f. physicians supports;
 - g. professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and
 - h. stress and risk factors;
2. living arrangements and program participation including:
 - a. people living in the home;
 - b. natural supports in the home;
 - c. living environments; and
 - d. supports and service providers;
3. medical and diagnostic information findings including:
 - a. diagnoses;
 - b. medications and dosages; and
 - c. need for relief from pain or illness; and

4. personal satisfaction reports including:
 - a. agency supports provided at home;
 - b. work or day programs;
 - c. living environment;
 - d. family relationships; and
 - e. social relationships.

D. - D.4.e. Repealed.

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 Service Financing and the Office for Citizens with Developmental Disabilities, LR 36:65 (January 2010), amended LR 40:69 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

§13706. Resource Allocation

A. The resource allocation model shall be used to assign service units based on the findings of the needs-based assessment and person-centered planning discussion for individuals who will be offered or are currently receiving New Opportunities Waiver services. Within the resource allocation model, there is a determination of an acuity level for individual and family support (IFS) services.

1. The participant or his/her representative may request a reconsideration and present supporting documentation

if he/she disagrees with the amount of assigned IFS service units. If the participant disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

2. Implementation of the resource allocation model was phased-in for the allocation of new NOW opportunities and renewal of existing NOW opportunities beginning July 1, 2009.

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, Bureau of Health Service Financing and the Office for Citizens with Developmental Disabilities, LR 43:

§13707. Programmatic Allocation of Waiver Opportunities

A. The intellectual/developmental disabilities request for services registry, hereafter referred to as "the registry," shall be used to identify persons with intellectual and/or developmental disabilities who are waiting for an OCDD waiver opportunity.

B. Individuals who are found eligible for developmental disabilities services using standardized tools, and who request waiver services will be added to the registry. The Request for Services Registry (RFSR) is arranged by the urgency of need and date of application for developmentally disabled (DD) waiver services.

C. Funded OCDD waiver opportunities will be offered based on the following priority groups:

1. Individuals living at Pinecrest Supports and Services Center or in a publicly operated ICF-ID when it was transitioned to a private ICF-ID through a cooperative endeavor agreement, or their alternates. Alternates are defined as individuals living in a private ICF-ID who will give up the private ICF-ID bed to an individual living at Pinecrest or to an individual who was living in a publicly operated ICF-ID when it was transitioned to a private ICF-ID through a cooperative endeavor agreement. Individuals requesting to transition from either facility listed above are awarded the appropriate waiver when one is requested, and their health and safety can be assured in an OCDD home and community-based waiver program.

a. The bed being vacated by the alternate in the private ICF-ID must be reserved for 14 days for the placement of a person being discharged from a publicly-operated facility. The person's discharge from a publicly-operated facility and his/her subsequent placement in a private ICF-ID is to occur as close as possible to the actual discharge of the alternate from the private ICF-ID and is not to exceed 14 days from the date of the alternate's discharge and certification for the waiver. The bed may be held vacant beyond the 14 days with the concurrence of the private ICF-ID provider.

b. The funded waiver opportunity will be reserved for a period not to exceed 120 days, however this 120-day period may be extended as needed.

2. Individuals on the registry who have the highest level of need and the earliest registry date shall be notified in writing when a funded OCDD waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment.

3. - 8. Repealed.

D. ...

E. Funded waiver opportunities will only be allocated to individuals who successfully complete the financial and medical eligibility process required for waiver certification.

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, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:3526 (December 2011), LR 40:70 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

§13709. Emergency Opportunities

Repealed.

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, Office for Citizens with Developmental Disabilities, LR 31:2901 (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), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 42:1520 (September 2016), repealed by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

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 or autonomy as described in R.S. 49:972 as the tiered waiver process will allow families with the highest urgency of

need and earliest registry dates to access services more quickly.

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 as described in R.S. 49:973 as the tiered waiver process will allow families with the highest urgency of need and earliest registry dates to access services more quickly.

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, October 26, 2017 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.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person

Preparing

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Address: Baton Rouge, LA

Rule Title: Home and Community-Based
Services Waivers

New Opportunities Waiver

Allocation of Waiver Opportunities

Date Rule Takes Effect: December 20, 2017

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$1,296 (\$648 SGF and \$648 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

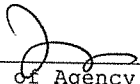
It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$648 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the New Opportunities Waiver (NOW) in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers and is centered on needs-based assessments and person-centered planning; 2) change the participant age requirement; 3) address and define priority groups; 4) require that a NOW opportunity be allocated only when other OCDD Waivers will not support the participant; 5) eliminate the inactive status for NOW registry; and 6) eliminate reserve capacity groups. It is anticipated that implementation of the proposed Rule may have an impact to recipients as a result of the change to a needs-based waiver allocation process. There is no anticipated fiscal impact because there is no change in the reimbursement methodology or the services provided under the waiver. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to NOW service providers for FY 17-18, FY 18-19 and FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head
or Designee

Evan Brant, Staff Assistant

Legislative Fiscal Officer
or Designee

Jen Steele, Medicaid Director
Typed name and Title of
Agency Head or Designee

9/8/17

Date of Signature

Shastha Jorrel

LDH/BHSF Budget Head

09/08/17

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the provisions governing the New Opportunities Waiver (NOW) in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers and is centered on needs-based assessments and person-centered planning; 2) change the participant age requirement; 3) address and define priority groups; 4) require that a NOW opportunity be allocated only when other OCDD Waivers will not support the participant; 5) eliminate the inactive status for NOW registry; and 6) eliminate reserve capacity groups.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the allocation of waiver opportunities in the New Opportunities Waiver (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 (Louisiana Register, Volume 42, Number 9).

The department now proposes to amend the provisions governing the NOW in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers and is centered on needs-based assessments and person-centered planning; 2) change the participant age requirement; 3) address and define priority groups; 4) require that a NOW opportunity be allocated only when other OCDD Waivers will not support the participant; 5) eliminate the inactive status for NOW registry; and 6) eliminate reserve capacity groups.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$1,296 will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 17-18	FY 18-19	FY 19-20
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,296	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$1,296	\$0	\$0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 17-18, \$1,296 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	\$648	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$648	\$0	\$0
OTHER (Specify)			
Total	\$1,296	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$648	\$0	\$0
LOCAL FUNDS			
Total	\$648	\$0	\$0

**Specify the particular fund being impacted*

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

In FY 17-18, \$648 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule amends the provisions governing the New Opportunities Waiver (NOW) in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers and is centered on needs-based assessments and person-centered planning; 2) change the participant age requirement; 3) address and define priority groups; 4) require that a NOW opportunity be allocated only when other OCDD Waivers will not support the participant; 5) eliminate the inactive status for NOW registry; and 6) eliminate reserve capacity groups.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that implementation of the proposed Rule may have an impact to recipients as a result of the change to a needs-based waiver allocation process. There is no anticipated fiscal impact because there is no change in the reimbursement methodology or the services provided under the waiver. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to NOW service providers for FY 17-18, FY 18-19 and FY 19-20.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.