

## 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 ~~NOW~~ a New Opportunities Waiver (NOW), an individual must be ~~three~~ 21 years of age or older, ~~offered a waiver opportunity (slot)~~ and meet all of the following criteria:

1. have ~~a~~ 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 (~~DD~~ IDD) request for services registry (RFSR), unless otherwise specified through programmatic allocation in §13707;

3. - 5. ...

6. have justification, ~~as documentation in the approved plan of care,~~ based on a uniform needs-based assessment and a person-centered planning discussion that the NOW ~~services~~

~~are appropriate,~~ is the only OCDD Waiver that will meet the needs of ~~cost effective and represent the least restrictive environment for~~ the individual;

7. ...

8. be a citizen of the United States or a qualified ~~alien~~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. ~~Resource Allocation Model~~Needs Based Assessment**

A. ~~Effective February 1, 2009,~~A uniform needs-based ~~assessments~~assessment ~~and a resource allocation model will be implemented in conjunction with person-centered planning is utilized~~ in the service planning process for the ~~Medicaid recipients~~individuals receiving or participating in ~~the New Opportunities Waiver~~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 uniform needs based assessments shall be utilized to determine the level of support needs of individuals with developmental disabilities.~~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. The purpose of the resource allocation model is to assign service units based on the findings of the assessments.~~

~~3. Within the resource allocation model, there is a determination of an acuity level for individual and family support (IFS) services.~~

~~a. 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.~~

~~4. Implementation of the resource allocation model was phased in for the allocation of new waiver opportunities and renewal of existing waiver opportunities beginning July 1,~~

~~2009.~~ 2. - 4. Repealed.

B. The ~~following~~ needs-based assessment ~~instruments~~ instrument(s) ~~shall be utilized to determine the level of support needs of NOW participants~~ is designed to evaluate the practical support requirements of individuals with developmental disabilities in daily living, medical and behavioral areas, including:

1. ~~the Supports Intensity Scale (SIS)~~ home living;
- ~~and~~
2. ~~Louisiana Plus (LA Plus).~~ community living;
3. lifelong learning;
4. employment;
5. health and safety;

6. social activities; and

7. protection and advocacy.

C. The ~~Supports Intensity Scale is a standardized assessment tool designed to evaluate the practical~~ needs-based assessment instrument(s) is also used to evaluate the individual's support requirements of individuals with developmental disabilities in 85 daily living, medical and behavioral areas needs based on information and data obtained from four areas of the person's life-, which includes:

1. ~~SIS measures~~ support needs measurements in the areas of including:
  - a. ~~home living~~ material support;
  - b. ~~community living~~ vision related supports;
  - c. ~~lifelong learning~~ hearing related supports;
  - d. ~~employment~~ supports for communicating needs;
  - e. ~~health and safety~~ positive behavior supports;
  - f. ~~social activities~~ physicians supports; and
  - g. ~~protection and advocacy~~ professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and
  - h. stress and risk factors;

2. ~~SIS then ranks each activity according to frequency, amount and type of support. A supports intensity level is determined based on a compilation of scores in general~~

~~supports, medical supports and behavior supports.~~ 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. Louisiana (LA) Plus is a locally developed assessment tool designed to identify support needs and related information not addressed by SIS. LA Plus serves as a complement to SIS in the support planning process. LA Plus is used to evaluate the individual's support needs based on information and data obtained from four areas of the person's life.~~

~~1. Support needs scale measurements including:~~

~~a. material supports;~~

- ~~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.~~
  - ~~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 ~~evaluate individuals for waiver eligibility and to fill all waiver opportunities for~~ identify persons with intellectual and/or developmental disabilities who are waiting for an OCDD waiver opportunity. ~~The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. The individual shall then choose a case management agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for level of care determination. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next person on the registry shall be notified as stated above and the process continues until an eligible person is assigned the waiver opportunity. A waiver opportunity shall be assigned to an individual when eligibility is established and the~~

~~individual is certified. By accepting a waiver opportunity, the person's name shall be removed from the registry.~~

B. ~~Right of Refusal. A person may be designated inactive on the registry upon written request to OCDD. When the individual determines that he/she is ready to begin the waiver evaluation process, he/she shall request, in writing, that his/her name be removed from inactive status. His/her original protected request date will be reinstated. In addition, persons who left a publicly operated facility after July 1, 1996 and who would have received a waiver opportunity, but chose another option at the time of discharge, may request access to a waiver opportunity through OCDD or its designated agent. OCDD will verify that the individual meets the criteria for this option and provide access to the next available waiver opportunity based on his/her date of discharge from the publicly operated facility. That will become his/her protected date.~~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. ~~Utilizing these procedures,~~Funded OCDD waiver opportunities ~~shall~~ will be ~~allocated to the targeted~~ offered based on the following priority groups~~-cited as follows.-~~:

1. ~~A minimum of 90 waiver opportunities shall be available for allocation to foster children in the custody of the Department of Children and Family Services (DCFS), Child Welfare Division or its successor, who successfully complete the financial and medical certification eligibility processes and are certified for the waiver. DCFS Child Welfare or its successor is the guardian for children who have been placed in DCFS custody by court order. DCFS or its successor shall be responsible for assisting the individual in gathering the documents needed in the eligibility determination process, preparing the plan of care, and submitting the plan of care document to OCDD.~~ 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. ~~A minimum of 160 waiver opportunities shall be available for people living at Pinecrest Supports and Services Center (formerly known as Pinecrest Development Center), or its alternates at private ICFs DD, Individuals on the registry who have chosen to receive community based waiver services, have successfully completed the financial eligibility~~highest level of need and ~~medical certification processes, and are certified for 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.~~  
~~For the purposes of assigning these waiver opportunities, an alternate is defined as a person who lives in a private ICF-DD, chooses to apply for waiver participation, is eligible for the waiver, and vacates a bed in the private ICF-DD for an~~

~~individual being discharged from a publicly operated facility. A person living at Pinecrest shall have the option to select a private ICF-DD placement in the area of his/her choice in order to designate the individual being discharged from the private ICF-DD as his/her alternate. The bed being vacated in the private ICF-DD 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-DD is to occur as close as possible to the actual discharge of the alternate from the private ICF-DD 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-DD provider.~~

~~3. Except for those waiver opportunities addressed in Paragraphs C.1, 2, 6 and 7 of this Section, waiver opportunities vacated during the waiver year shall be made available to persons residing in or leaving any publicly-operated ICF-DD at the time the facility is transferred to any private ICF-DD under a cooperative endeavor agreement with OCDD, or their alternates.~~

~~4. A waiver opportunity will be reserved for persons who choose to transition from a publicly operated facility to community-based waiver services. The reservation of a waiver~~

~~opportunity shall not exceed 120 days. However, justification to exceed this 120-day reservation period may be granted as needed.~~

~~5. Waiver opportunities not utilized by persons living in public ICFs-DD or their alternates shall be divided between:~~

~~a. the next individual on the registry who is living in either a nursing facility or private ICF-DD; and~~

~~b. the next individual on the registry who is residing in the community.~~

~~6. Ten waiver opportunities shall be used for qualifying persons with developmental disabilities who receive services from the Developmental Neuropsychiatric Program (DNP). This is a project between OCDD and the Office of Behavioral Health in the development of coordinated wrap around services for individuals who choose to participate in the waiver and meet the financial and medical eligibility requirements for the waiver.~~

~~7. Two hundred and eighty-one waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 281 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through~~

~~other resources currently available for individuals with developmental disabilities.~~

~~8. Funded waiver opportunities not addressed above shall be available for allocation to the next individual on the registry who successfully completes the financial eligibility and medical certification process and is certified for the waiver.~~  
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**

~~A. Requests for emergency waiver services shall be made through the local governing entities (LGEs) responsible for~~



~~coordination of services for persons with developmental disabilities. When a request for emergency services is received, the LGE shall complete a standardized screening tool that incorporates standardized operational procedures 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.~~

~~\_\_\_\_\_ C. Effective for dates of service on or after September 20, 2016, an individual must meet the required criteria within the OCDD standardized screening tool in order to qualify for emergency waiver services.~~

~~\_\_\_\_\_ 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.~~ 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](mailto: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.

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Secretary