

NOTICE OF INTENT

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

Home and Community-Based Services Waivers  
Residential Options Waiver  
Allocation of Waiver Opportunities  
(LAC 50:XXI.16105,16107, and 16901)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.16105, §16107, and §16901 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.

In compliance with Act 299 of the 2011 Regular Session of the Louisiana Legislature the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Residential Options Waiver (ROW) to clarify the reimbursement methodology, remove language that provided historical information pertaining to the rate reimbursement and revise the terminology associated with ROW reimbursements (*Louisiana Register*, Volume 42, Number 6).

The department now proposes to amend the provisions governing ROW in order to: 1) implement a tiered waiver

allocation process which establishes one Request for Services Registry for all OCDD waivers; 2) allow a one-time transfer of individuals with an OCDD statement of approval to be transitioned from OAAS's Community Choices Waiver and Adult Day Healthcare Waiver wait list to the OCDD wait list; 3) change the entrance age requirement; 4) clarify priority groups; and 5) change the rate methodology for support coordination service from a unit rate to monthly flat rate billing.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXI. Home and Community Based Services Waivers**

##### **Subpart 13. Residential Options Waiver**

#### **Chapter 161. General Provisions**

##### **§16105. Participant Qualifications**

A. In order to qualify for Residential Options Waiver (ROW), 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 determined eligible through the developmental disabilities entry process;
3. be on the intellectual/developmental disabilities (IDD) request for services registry (RFSR), unless otherwise specified through programmatic allocation in §16107;
4. meet the requirements for an ICF/ID level of care which requires active treatment for developmental disabilities

under the supervision of a qualified developmental disabilities professional;

5. meet the financial eligibility requirements for the Louisiana Medicaid Program;

6. have justification, based on a uniform needs-based assessment and a person-centered planning discussion that the ROW is the OCDD waiver that will meet the needs of the individual;

7. be a resident of Louisiana; and

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

B. Individuals under the age of 21 who receive ROW services prior to promulgation of this final Rule will be grandfathered-in to the ROW program. Individuals under the age of 21 who are in the process of being certified into the ROW prior to the promulgation of this final Rule will retain their ROW offer and be allowed to transition to the ROW program.

C. Individuals age eighteen through twenty may be offered a funded ROW opportunity if the results of the uniform needs-based assessment and person-centered planning discussion determine that the ROW 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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2155 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:  
**\$16107. 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. 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 urgency of need and date of application for developmentally disabled (DD) waiver services, except for the priority groups listed in B.1-4 of this Section.

1. - 3. Repealed.

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

1. Individuals with intellectual and developmental disabilities (I/DD) who have a statement of approval (SOA)

through OCDD, and who currently receive services via the Office of Aging and Adult Services (OAAS) Community Choices Waiver (CCW) or Adult Day Health Care (ADHC) Waiver programs, shall be a priority group to allow for an one time transition into the ROW upon promulgation of this final Rule.

2. 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. - b.vii. Repealed.

3. 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.

a. - e. Repealed.

4. Persons who reside in a Medicaid-enrolled ICF/ID and wish to transition to a home and community-based residential services waiver through a voluntary ICF/ID bed conversion process.

5. - 7. Repealed.

C. ...

D. 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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2155 (October 2015), LR 42:62 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

**Chapter 169. Reimbursement**

**§16901. Unit of Reimbursement**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service and reimbursement shall not be made for

less than one quarter hour of service. This covers both the service provision and administrative costs for these services:

1. - 5.f. ...
6. supported employment;
  - a. individual placement; and
  - b. micro-enterprise; and
7. adult day health care.
  - 7.a. - 8. Repealed.

EXCEPTION: The reimbursement for support coordination shall be at a fixed monthly rate and in accordance with the terms of the established contract.

B. - J. ...

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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:1049 (April 2013), LR 41:2168, 2170 (October 2015), LR 42:63 (January 2016), LR 42:900 (June 2016), amended 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 get 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 get 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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Financing

Return P.O. Box 91030

Address: Baton Rouge, LA

Rule Title: Home and Community-Based  
Services Waivers  
Residential Options 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 \$972 (\$486 SGF and \$486 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 \$486 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.*

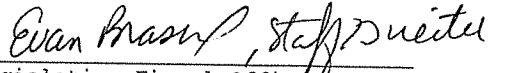
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

*This proposed Rule amends the provisions governing the Residential Options Waiver (ROW) in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers; 2) allow a one-time transfer of individuals with an OCDD statement of approval to be transitioned from OAAS's Community Choices Waiver and Adult Day Healthcare Waiver wait list to the OCDD wait list; 3) change the entrance age requirement; 4) clarify priority groups; and 5) change the rate methodology for support coordination service from a unit rate to monthly flat rate billing. 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. Recipients may also be impacted by the change in the entrance age requirement for accessing ROW services. The Rule also changes the payment methodology from an incremental payment to a per diem payment. There is no fiscal impact because the per diem for support coordination services is based on current dollars spent. In addition, there are no changes in service definitions or expectation for support coordination services; therefore, there is no anticipated impact to the providers. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to ROW service providers for FY 17-18, FY 18-19 and FY 19-20.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

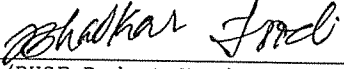
*This rule has no known effect on competition and employment.*

  
\_\_\_\_\_  
Signature of Agency Head  
or Designee

  
\_\_\_\_\_  
Legislative Fiscal Officer  
or Designee

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

9/3/17  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
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 Residential Options Waiver (ROW) in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers; 2) allow a one-time transfer of individuals with an OCDD statement of approval to be transitioned from OAAS's Community Choices Waiver and Adult Day Healthcare Waiver wait list to the OCDD wait list; 3) change the entrance age requirement; 4) clarify priority groups; and 5) change the rate methodology for support coordination service from a unit rate to monthly flat rate billing.*

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

*In compliance with Act 299 of the 2011 Regular Session of the Louisiana Legislature the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Residential Options Waiver (ROW) to clarify the reimbursement methodology, remove language that provided historical information pertaining to the rate reimbursement and revise the terminology associated with ROW reimbursements (Louisiana Register, Volume 42, Number 6).*

*The department now proposes to amend the provisions governing ROW in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers; 2) allow a one-time transfer of individuals with an OCDD statement of approval to be transitioned from OAAS's Community Choices Waiver and Adult Day Healthcare Waiver wait list to the OCDD wait list; 3) change the entrance age requirement; 4) clarify priority groups; and 5) change the rate methodology for support coordination service from a unit rate to monthly flat rate billing.*

- 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 \$972 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    | \$972        | \$0        | \$0        |
| PROFESSIONAL SERVICES |              |            |            |
| OTHER CHARGES         |              |            |            |
| REPAIR & CONSTR.      |              |            |            |
| POSITIONS (#)         |              |            |            |
| <b>TOTAL</b>          | <b>\$972</b> | <b>\$0</b> | <b>\$0</b> |

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, \$972 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 | \$486        | \$0        | \$0        |
| SELF-GENERATED     |              |            |            |
| FEDERAL FUND       | \$486        | \$0        | \$0        |
| OTHER (Specify)    |              |            |            |
| <b>Total</b>       | <b>\$972</b> | <b>\$0</b> | <b>\$0</b> |

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             | \$486        | \$0        | \$0        |
| LOCAL FUNDS               |              |            |            |
| <b>Total</b>              | <b>\$486</b> | <b>\$0</b> | <b>\$0</b> |

*\*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, \$486 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 Residential Options Waiver (ROW) in order to: 1) implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers; 2) allow a one-time transfer of individuals with an OCDD statement of approval to be transitioned from OAAS's Community Choices Waiver and Adult Day Healthcare Waiver wait list to the OCDD wait list; 3) change the entrance age requirement; 4) clarify priority groups; and 5) change the rate methodology for support coordination service from a unit rate to monthly flat rate billing.*

- 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. Recipients may also be impacted by the change in the entrance age requirement for accessing ROW services. The Rule also changes the payment methodology from an incremental payment to a per diem payment. There is no fiscal impact because the per diem for support coordination services is based on current dollars spent. In addition, there are no changes in service definitions or expectation for support coordination services; therefore, there is no anticipated impact to the providers. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to ROW 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.*