

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 ~~services through the Residential Options Waiver-ROW~~ (ROW), an individual must be ~~offered a ROW opportunity~~ 21 years of age or older and meet all of the following criteria:

1. have ~~a~~ an intellectual and/or developmental disability as specified in ~~the Louisiana Developmental Disability Law and determined through the developmental disabilities system entry process~~ R.S. 28:451.2;
2. ~~meet the requirements for an ICF/ID level of care which requires active treatment for~~ be determined eligible through the developmental disabilities ~~under the supervision of~~

~~a qualified developmental disabilities professional~~entry
process;

3. ~~meet the financial eligibility requirements for~~
~~the Louisiana Medicaid Program~~be on the
intellectual/developmental disabilities (IDD) request for
services registry (RFSR), unless otherwise specified through
programmatic allocation in §16107;

4. ~~be a resident of Louisiana~~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; and

5. ~~be a citizen of the United States or a qualified~~
~~alien.~~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. ~~Assurances are required that the health, safety, and~~
~~welfare of the individual can be maintained in the community~~
~~with the provision of~~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. ~~Justification must be documented in the OCDD-approved POC that the~~ Individuals age eighteen through twenty may be offered a funded ROW ~~services are appropriate, cost effective, and represent the least restrictive environment for the individual~~ 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 ~~evaluate individuals for ROW opportunities and to fill waiver opportunities for~~ identify persons with intellectual and/or developmental disabilities, ~~except for those specific opportunities to be provided to persons who are described in Paragraph B.1-5 of this Section, who are not on the registry~~ 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. 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 support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination.~~

~~2. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated in Paragraph B.1 of this Section, and the~~

~~process continues until an eligible individual is assigned the waiver opportunity.~~

~~3. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a ROW opportunity, this person's name will be removed from the registry.~~1. - 3. Repealed.

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

1. ~~persons who meet the ICF/ID level of care and are being serviced through the~~ Individuals with intellectual and developmental disabilities (I/DD) who have a statement of approval (SOA) through OCDD, ~~host home contracts,~~ 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. ~~persons who meet the ICF/ID level of care, and who need HCBS due to a health and/or safety crisis situation (crisis diversion):~~ 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. requests for crisis diversion shall be made through OCDD. To be considered for a crisis diversion opportunity, the individual must need long-term supports, not temporary or short-term supports;~~

~~b. determination of priority for a crisis diversion ROW opportunity will be considered by OCDD for the individual who is eligible for services and meets one of the following criteria:~~

~~i. homeless;~~

~~ii. at imminent risk of losing current residential placement;~~

~~iii. referred by the judicial system;~~

~~iv. referred by child, adult, or elderly protective authorities;~~

~~v. without a caregiver and cannot adequately care for self;~~

~~vi. with a caregiver who can no longer provide care; or~~

~~vii. whose needs cannot be met within a community living situation;~~
a. - b.vii. Repealed.

3. ~~children~~ 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. are from birth to age 18;~~
~~b. reside in a nursing facility;~~
~~c. meet the high-need requirements for a nursing facility level of care, as well as the ROW level of care requirements;~~
~~d. participate in the MFP Rebalancing Demonstration; and~~
~~e. have parents or legal guardians who wish to transition them to a home and community-based residential services waiver;~~
a. - e. Repealed.

4. ~~persons~~ 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~~7.~~ .

~~5. persons who wish to transition from a supports and services center into a ROW opportunity;~~
~~6. adults in nursing facilities (NFs) who wish to transition to home and community-based residential services, and~~

~~who meet the level of care (LOC) that qualifies them for ROW eligibility based on their RFSR protected date on a first come, first served basis; and~~

~~7. persons residing in ICFs/ID who wish to transition to a home and community based residential services setting and are eligible based on their RFSR protected date on a first come, first served basis.~~ 5. - 7. Repealed.

C. ...

~~D. Individuals with intellectual and developmental disabilities (I/DD) who have a statement of approval (SOA) through the Office for Citizens with Developmental Disabilities (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 placed in a reserved capacity group to allow for transition into the ROW.~~ 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. ~~support coordination;~~ supported employment;

a. individual placement; and

b. micro-enterprise; and

7. ~~supported employment;~~ adult day health care.

~~a. individual placement; and~~

~~b. micro-enterprise; and~~

~~8. 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