

## **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  
Individual and Family Support Payments  
(LAC 50:XXI.13701,13902,13927,13933, and 14301)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.13701, §13927, and §14301, adopt §13902, and repeal §13933 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 propose to amend the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

### **Title 50**

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

Part XXI. Home and Community-Based Services Waivers  
Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13701. Introduction

A. - D. ...

E. Only the following NOW services shall be provided for, or billed for, during the same hours on the same day as any other NOW service:

1. ...
2. supported independent living; and
3. ~~complex care~~ skilled nursing services.

a. Skilled nursing services may only be provided with:

- i. substitute family care;
- ii. supported independent living;
- iii. day habilitation;
- iv. supported employment (all three modules); and/or
- v. prevocational services

~~4. skilled nursing services. Skilled nursing services may be provided with:~~

- ~~a. substitute family care;~~
- ~~b. supported independent living;~~
- ~~c. day habilitation;~~

~~d. supported employment (all three modules);~~  
~~and/or~~

~~e. prevocational services.~~ 4. - 4.e. Repealed.

F. - G. ...

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, Office of the Secretary,  
Office for Citizens with Developmental Disabilities, LR 33:1647  
(August 2007), amended by the Department of Health and  
Hospitals, Bureau of Health Services Financing and the Office  
for Citizens with Developmental Disabilities, LR 40:68 (January  
2014), amended by the Department of Health, Bureau of Health  
Services Financing and the Office for Citizens with  
Developmental Disabilities, LR 44:50 (January 2018), LR 45:42  
(January 2019), LR 46:

## **Chapter 139. Covered Services**

### **§13902 Individual and Family Support Supplemental Payments**

A. Supplemental payments will be made to licensed HCBS  
providers with a PCA module who support individuals currently  
receiving qualified waiver services who have complex medical  
and/or behavioral needs and are at a higher risk of  
institutionalization.

1. The integration of the supplemental payment provides additional funding to licensed HCBS providers with a PCA module who provide supports that focus on the prevention of deteriorating or worsening medical or behavioral conditions for individuals with complex needs.

2. The provider will be required to complete a screening tool and submit initial documentation as outlined in the program manual prior to qualifying for any supplemental payment. The supplemental payment will be re-evaluated annually to determine ongoing need per program requirements.

3. The PCA providers must be licensed home and community-based services (HCBS) providers with a personal care attendant module in order to receive the supplemental payment, in addition to the criteria listed in §13902 B.

B. Determination Process: A PCA provider can qualify for a supplemental payment if the individual currently receiving qualified waiver services has a complex medical and/or behavioral need.

1. Complex Medical

a. Individuals must require at least two of the following non-complex tasks delegated by a registered nurse to a non-licensed direct service worker:

i. suctioning of a clean, well-healed, uncomplicated mature tracheostomy in an individual who

has no cardiopulmonary problems and is able to cooperate with the person performing the suctioning (excludes deep suctioning);

ii. care of a mature tracheostomy site;

iii. removing/cleaning/replacing inner tracheostomy cannula for mature tracheostomy;

iv. providing routine nutrition, hydration or medication through an established gastrostomy or jejunostomy tube (excludes nasogastric tube);

v. clean intermittent urinary catheterization;

vi. obtaining a urinary specimen from a port of an indwelling urinary catheter;

vii. changing a colostomy appliance;

viii. ensuring proper placement of nasal cannula (excludes initiation/changing of flow rate;

ix. capillary blood glucose testing;

x. simple wound care (including non-sterile/clean dressing removal/application); or

xi. other delegable non-complex tasks as approved by OCDD in accordance with LAC 48:1 Chapter 92

#### Subchapter D.

### 2. Behavioral

a. The individual meets two of the following items:

i. specific behavioral programming/procedures are required, or the individual receives behavioral health treatment/therapy and needs staff assistance on a daily basis to complete therapeutic homework or use skills/coping mechanisms being addressed in therapy;

ii. staff must sometimes intervene physically with the individual beyond a simple touch prompt or redirect, or the individual's environment must be carefully structured based on professionally driven guidance/assessment to avoid behavior problems or minimize symptoms; or

iii. a supervised period of time away, outside of the individual's weekly routine, such as work, school or participation in his/her community, is needed at least once per week; and

b. the individual requires one of the following due to the items listed in a.-a.iii above:

i. higher credentialed staff (college degree, specialized licensing, such as registered behavior technician [RBT], applied behavior analysis [ABA], etc.), who have advanced behavioral training for working with individuals with severe behavioral health symptoms or significant experience working with this population; or

ii. the need for higher qualified supervision of the direct support of staff (master's degree,

additional certification, such as board certified behavior analyst [BCBA], etc.).

C. The supplemental payment is not allowed for waiver participants who do not receive individual and family support (IFS) services.

D. The supplemental payment may not be approved for waiver participants receiving IFS hours in addition to 12 or more hours of skilled nursing per day.

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 Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

**§13927. Skilled Nursing Services**

A. - B. ...

C. Provider Qualifications. The provider must be licensed by the Department of Health as a home health agency~~and community-based services provider and must meet the module specific requirements for the service being provided.~~

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 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary,

Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:77 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 46:

**§13933      Complex Care**

~~A. The complex care service provides additional support to individuals currently receiving qualified waiver services who have complex medical and/or behavioral needs, and are at a higher risk of institutionalization.~~

~~1. The integration of the complex care waiver service provides supports that focus on the prevention of deteriorating or worsening medical or behavioral conditions.~~

~~2. The complex care service will be re-evaluated to determine ongoing need.~~

~~B. Determination Process~~

~~1. Medical~~

~~a. Non-complex medical tasks must be delegated by a registered nurse to a non-licensed direct service worker (DSW) according to the provisions of LAC 48:I.Chapter 92, Subchapter D, Medication Administration and Noncomplex Tasks in Home and Community-Based Settings.~~



~~b. Individuals must require at least two of the following non-complex nursing tasks:~~

~~i. suctioning of a clean, well-healed, uncomplicated mature tracheostomy in an individual who has no cardiopulmonary problems and is able to cooperate with the person performing the suctioning (excludes deep suctioning);~~

~~ii. care of a mature tracheostomy site;~~

~~iii. removing/cleaning/replacing inner tracheostomy cannula for mature tracheostomy;~~

~~iv. providing routine nutrition, hydration or medication through an established gastrostomy or jejunostomy tube (excludes naso-gastrostomy tube);~~

~~v. clean intermittent urinary catheterization;~~

~~vi. obtaining a urinary specimen from a port of an indwelling urinary catheter; or~~

~~vii. changing a colostomy appliance;~~

~~viii. ensuring proper placement of nasal cannula (excludes initiation/changing of flow rate;~~

~~ix. capillary blood glucose testing;~~

~~x. simple wound care (including non-sterile/clean dressing removal/application);~~

~~xi. Other delegable non-complex tasks as approved by OCDD; and~~

~~\_\_\_\_\_ c. documented evidence that home health/skilled nursing agencies cannot provide the service via other available options, such as the Medicaid State Plan.~~

~~\_\_\_\_\_ 2. Behavioral~~

~~\_\_\_\_\_ a. The individual meets two of the following items:~~

~~\_\_\_\_\_ i. specific behavioral programming/procedures are required, or the individual receives behavioral health treatment/therapy and needs staff assistance on a daily basis to complete therapeutic homework or use skills/coping mechanisms being addressed in therapy;~~

~~\_\_\_\_\_ ii. staff must sometimes intervene physically with the individual beyond a simple touch prompt or redirect, or the individual's environment must be carefully structured based on professionally driven guidance/assessment to avoid behavior problems or minimize symptoms; or~~

~~\_\_\_\_\_ iii. a supervised period of time away is needed at least once per week. This may manifest by the presence of severe behavioral health symptoms on a weekly basis that restricts the individual's ability to work, go to school and/or participate in his/her community; and~~

~~\_\_\_\_\_ b. The individual requires one of the following due to the items listed in a. a.iii above:~~

~~\_\_\_\_\_ i. higher credentialed staff (college degree, specialized licensing, such as registered behavior~~

~~technician [RBT], applied behavior analysis [ABA], etc.),  
advanced behavioral training for working with individuals with  
severe behavioral health symptoms or significant experience  
working with this population; or~~

~~ii. the need for higher qualified  
supervision of the direct support of staff (master's degree,  
additional certification, such as board certified behavior  
analyst [BCBA], etc.), and the expertise is not available  
through other professionals/services.~~

~~C. Complex care is not a billable service for waiver  
participants who do not receive individual and family support  
services.~~

~~D. Complex care service must be approved for waiver  
participants receiving IFS hours in addition to 12 or more hours  
of skilled nursing per day.~~

~~E. Complex care service providers must be licensed home  
and community-based services (HCBS) providers with a personal  
care attendant module.~~[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, Bureau of Health Services Financing and the Office for  
Citizens with Developmental Disabilities, LR 45:43 (January  
2019), repealed LR 46:

## **Chapter 143. Reimbursement**

**§14301. Unit of Reimbursement**

A. - B.3. ...

C. The following services are paid through a per diem:

1.- 4. ...

5. ~~complex care~~ individual and family support  
supplemental payment.

D. - F. ...

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 30:1209 (June 2004), amended by the  
Department of Health and Hospitals, Office for Citizens with  
Developmental Disabilities, LR 34:252 (February 2008), amended  
by the Department of Health and Hospitals, Bureau of Health  
Services Financing and the Office for Citizens with  
Developmental Disabilities, LR 35:1851 (September 2009), LR  
36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April  
2013), LR 40:80 (January 2014), LR 42:898 (June 2016), amended  
by the Department of Health, Bureau of Health Services Financing  
and the Office for Citizens with Developmental Disabilities, LR  
44:58 (January 2018), LR 45:44 (January 2019), LR 46:

Implementation of the provisions of this Rule may be  
contingent upon the approval of the U.S. Department of Health  
and Human Services, Centers for Medicare and Medicaid Services

(CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is

anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen

Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary