

NOTICE OF INTENT

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

**Medicaid Eligibility
Act 421 Children's Medicaid Option
(LAC 50:III.2331)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:III.2331 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.

Act 421 of the 2019 Regular Session of the Louisiana Legislature directed the Department of Health to establish the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) option within the Medical Assistance Program through which children with disabilities can access Medicaid-funded services regardless of their parents' income. In compliance with Act 421, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions that established the Act 421 Children's Medicaid Option (TEFRA). The department now proposes to amend the provisions governing Medicaid eligibility groups and programs in

order to remove the requirement that an applicant be ineligible for other Medicaid services before being considered for the Act 421 Children's Medicaid Option and to revise language regarding level of care.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part I. Administration
Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2331. Act 421 Children's Medicaid Option (Act 421-CMO/TEFRA)

A. Pursuant to section 1902(e)(3) of the Social Security Act the state may extend Medicaid eligibility to certain children living in the community, who require the level of care provided in an institution, and who would be eligible for Medicaid if living in an institution.

1. - 2. Repealed.

B. Effective January 1, 2022, the department implemented the Act 421 Children's Medicaid Option (Act 421-CMO) program to provide Medicaid State Plan services to children with disabilities who, despite parental or household income and resources, meet the eligibility criteria set forth in this Section.

1. - 2.b.iii(c). Repealed.

C. Eligibility Criteria. In order to qualify for the 421-CMO program, an applicant/Act 421-CMO beneficiary must meet all of the following criteria:

1. is 18 years of age or younger (under 19 years of age);
 - a. - b. Repealed.
2. is a U.S. citizen or qualified non-citizen;
3. is a Louisiana resident;
4. has countable resources that are equal to or less than the resource limits for the Supplemental Security Income (SSI) program;
5. has countable income equal to or less than the special income level for long-term care services (nursing facility, ICF/IID, and home and community-based services);
6. qualifies as a disabled individual under section 1614(a) of the Social Security Act;
7. must meet a level of care, assessed on an annual basis, provided in an intermediate care facility for individuals with intellectual disabilities (ICF/IID), a nursing facility, or a hospital; and
8. care needs are being safely met at home at a lower cost than the cost of services provided in an institutional setting.

D. Act 421 Children's Medicaid Option (Act 421-CMO/TEFRA)
Levels of Care

1. The individual meets Act 421-CMO ICF/IID level of care when demonstrating both of the following:

a. has obtained a statement of approval from the Office for Citizens with Developmental Disabilities, or its designee, or EarlySteps eligibility (depending on age) confirming that he/she has a developmental disability as defined in R.S. 28:451.2; and

b. meets the requirements for active treatment of a developmental disability under the supervision of a qualified developmental disability professional, as prescribed on the Request for Medical Eligibility Determination, Form 90-L.

2. The individual meets Act 421-CMO nursing facility level of care when demonstrating both of the following, assessed in accordance with the Act 421 Children's Medicaid Option assessment tool:

a. has a diagnosis of a medical/physical condition resulting in needs requiring long term care services of at least six months; and

b. requires skilled nursing interventions and/or has substantial functional limitations (SFLs) requiring hands-on assistance from others throughout the day.

3. The individual meets hospital level of care when demonstrating all of the following, assessed in accordance with the Act 421 Children's Medicaid Option assessment tool:

a. the need for frequent medical care that requires the use of equipment to prevent life-threatening situations, with skilled medical care required more than once during each 24-hour period;

b. the need for skilled medical interventions that are expected to persist for at least six months; and

c. an overall health condition that is unstable, presenting the constant potential for complications or rapid deterioration, such that he/she requires monitoring by professional nurses, parents, or other properly instructed individuals, in order to detect unstable and life-threatening conditions and respond promptly with appropriate care.

E. Cost Effectiveness

1. On an annual basis, each 421-CMO beneficiary's expenditures will be measured against the average cost of care in an institution that corresponds to his/her level of care (i.e. hospital, ICF/IID, nursing facility) to ensure that home and community-based care is more cost effective than institutional care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1872 (December 2021), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 49:

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 a positive impact on child, individual, or family

poverty in relation to individual or community asset development as described in R.S. 49:973, since applicants will not be required to be considered for buy-in programs prior to consideration for Act 421-CMO.

Small Business Analysis

In compliance with the Small Business Protection Act, 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.

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, 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.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The

deadline for submitting written comments is at 4:30 p.m. on May 30, 2023.

Public Hearing

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 May 10, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 25, 2023 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 May 10, 2023. 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.

Stephen R. Russo

LDH Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Veronica Dent Dept.: Health

Phone: 342-3238 Office: Bureau of Health Services Financing

Return
Address: PO Box 91030 Rule
Baton Rouge, LA Title: Medicaid Eligibility
Act 421 Children's Medicaid Option

Date Rule
Takes Effect: July 20, 2023

SUMMARY
(Use complete sentences)

In accordance with Section 961 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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND 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 result in an indeterminable cost to the state for FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 22-23 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 have an indeterminable impact on revenue collections for FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes. It is anticipated that \$432 will be collected in FY 22-23 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, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing Medicaid eligibility groups and programs in order to remove the requirement that an applicant be ineligible for other Medicaid services before being considered for the Act 421 Children's Medicaid Option and to revise language regarding level of care. This proposed rule will ensure that Medicaid applicants do not have to be considered for a buy-in program prior to consideration for Act 421 Children's Medicaid Option. It is anticipated that implementation of this proposed rule will not result in costs or benefits to Medicaid providers or small businesses. It is anticipated that this proposed rule will result in an indeterminable cost to the Medicaid program in FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment

Tara A. LeBlanc
Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

04/05/2023
Date of Signature

Evan Brasseaux, Interim Deputy Fiscal Officer
Legislative Fiscal Officer or Designee

4/6/23
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 deliberation 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 Medicaid eligibility groups and programs in order to remove the requirement that an applicant be ineligible for other Medicaid services before being considered for the Act 421 Children's Medicaid Option and to revise language regarding level of care.

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

Act 421 of the 2019 Regular Session of the Louisiana Legislature directed the Department of Health to establish the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) option within the Medical Assistance Program through which children with disabilities can access Medicaid-funded services regardless of their parents' income. In compliance with Act 421, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions that established the Act 421 Children's Medicaid Option (TEFRA). The department now proposes to amend the provisions governing Medicaid eligibility groups and programs in order to remove the requirement that an applicant be ineligible for other Medicaid services before being considered for the Act 421 Children's Medicaid Option and to revise language regarding level of care.

- 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.

It is anticipated that implementation of this proposed rule will result in an indeterminable cost to the state for FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes. In FY 22-23, \$864 is included 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) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

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

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

COSTS	FY 23	FY 24	FY 25
Personal Services			
Operating Expenses	See Below	See Below	See Below
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	See Below	See Below	See Below
POSITIONS (#)			

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.

It is anticipated that this proposed rule will result in an indeterminable cost to the Medicaid program in FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes. In FY 22-23, \$864 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 23	FY 24	FY 25
State General Fund	See Below	See Below	See Below
Agency Self-Generated			
Dedicated			
Federal Funds	See Below	See Below	See Below
Other (Specify)			
TOTAL	See Below	See Below	See Below

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. It is anticipated that this proposed rule will result in an indeterminable cost to the Medicaid program in FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes.

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

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments 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 government units.

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

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

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

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

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

REVENUE INCREASE/DECREASE	FY 23	FY 24	FY 25
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	See Below	See Below	See Below
Local Funds			
TOTAL	See Below	See Below	See Below

*Specify the particular fund being impacted.

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

It is anticipated that the implementation of this proposed rule will have an indeterminable impact on revenue collections for FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes. In FY 22-23, \$432 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

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

This proposed rule amends the provisions governing Medicaid eligibility groups and programs in order to remove the requirement that an applicant be ineligible for other Medicaid services before being considered for the Act 421 Children's Medicaid Option and to revise language regarding level of care. This proposed rule will ensure that Medicaid applicants do not have to be considered for a buy-in program prior to consideration for Act 421 Children's Medicaid Option.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule will not result in costs or benefits to Medicaid providers or small businesses. It is anticipated that this proposed rule will result in an indeterminable cost to the Medicaid program in FY 22-23, FY 23-24, and FY 24-25, since there is no way to determine how many individuals, if any, will qualify under different Medicaid programs under the proposed changes.

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.