

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
New Opportunities Waiver
Emergency Opportunities
(LAC 50:XXI.13709)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.13709 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 and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the allocation of waiver opportunities in the New Opportunities Waiver (NOW) to revise the criteria for emergency waiver services, simplify the allocation process for NOW emergency opportunities, and facilitate faster access to NOW emergency services for qualified individuals (*Louisiana Register*, Volume 41, Number 9).

The department subsequently promulgated an Emergency Rule to rescind the October 1, 2015 Emergency Rule in order to

return to the provisions in place governing the allocation of waiver opportunities for the NOW located in LAC 50:XXI.13709 (*Louisiana Register*, Volume 42, Number 1).

The department has now determined that it is necessary to amend the provisions governing the allocation of waiver opportunities in the 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.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§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.

1. - 5. Repealed.

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.

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 (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), LR 42:

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 and autonomy as described in R.S. 49:972 as it will allow individuals and families in crisis to obtain faster access to necessary services.

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 by allowing families to obtain emergency services faster which may reduce their financial burden if they are incurring costs for services initially.

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, July 28, 2016 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

Statement: Cedric Clark

Phone: 342-2339

Dept.: Health and Hospitals

Office: Bureau of Health Services
Financing

Return P.O. Box 91030

Address: Baton Rouge, LA

Rule Title: Home and Community-Based
Services Waivers
New Opportunities Waiver
Emergency Opportunities

Date Rule Takes Effect: September 20, 2016

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.

ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS
(SUMMARY)

I. It is anticipated that implementation of this proposed rule will have no material programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16; however, there is potential for a nominal increase in expenditures since emergency opportunities will be accessed faster. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 15-16 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 no material effect on revenue collections other than the federal share of the promulgation costs for FY 15-16; however, there is potential for a nominal increase in revenue collections since emergency opportunities will be accessed faster. It is anticipated that \$378 will be collected in FY 15-16 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 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. The proposed changes are not expected to have a material impact on NOW program expenditures since the number of opportunities in the existing waiver or service utilization will not change; however, there is potential for a nominal increase in expenditures since emergency opportunities will be accessed faster. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to NOW service providers for FY 15-16, FY 16-17 and FY 17-18.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee



DHH/BHSF Budget Head

Evan Brassel, Staff Director 6-10-16

Legislative Fiscal Officer
or Designee

6/9/16

Date of Signature

06/10/16

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 allocation of waiver opportunities in the 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.

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the allocation of waiver opportunities in the New Opportunities Waiver (NOW) to revise the criteria for emergency waiver services, simplify the allocation process for NOW emergency opportunities, and facilitate faster access to NOW emergency services for qualified individuals (Louisiana Register, Volume 41, Number 9).

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- 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 15-16. It is anticipated that \$756 will be expended in FY 15-16 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 15-16	FY 16-17	FY 17-18
PERSONAL SERVICES			
OPERATING EXPENSES	\$756	See below	See below
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$756	See below	See below

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 15-16, \$756 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule. It is anticipated that implementation of this proposed rule will have no material programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16; however, there is potential for a nominal increase in expenditures since emergency opportunities will be accessed faster.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	\$378	See below	See below
SELF-GENERATED			
FEDERAL FUND	\$378	See below	See below
OTHER (Specify)			
Total	\$756	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.

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 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$378	See below	See below
LOCAL FUNDS			
Total	\$378	See below	See below

**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 15-16, \$378 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule. It is anticipated that the implementation of this proposed rule will have no material effect on revenue collections other than the federal share of the promulgation costs for FY 15-16; however, there is potential for a nominal increase in revenue collections since emergency opportunities will be accessed faster.

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 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. The proposed changes are not expected to have a material impact on NOW program expenditures since the number of opportunities in the existing waiver or service utilization will not change; however, there is potential for a nominal increase in expenditures since emergency opportunities will be accessed faster.

- 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 this proposed rule will not have economic costs or benefits to NOW service providers for FY 15-16, FY 16-17 and FY 17-18.

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.