

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
And
Office of Aging and Adult Services**

**Home and Community-Based Services Waivers
Community Choices Waiver
Resource Assessment and Allocation Process
(LAC 50:XXI.8107)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.8107 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 Office of Aging and Adult Services (OAAS) currently uses an updated version of the uniform international resident assessment instrument (interRAI) tool to determine nursing facility level of care for OAAS programs. The Department of Health, Bureau of Health Services Financing and OAAS propose to amend the provisions governing the resource assessment and allocation process in the Community Choices Waiver in order to update the language regarding interRAI assessments.

**Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 7. Community Choices Waiver**

Chapter 81. General Provisions

§8107. Resource Assessment and Allocation Process

A. Each Community Choices Waiver applicant/participant shall be assessed using the uniform international resident assessment instrument (interRAI) . This assessment provides researched and validated measures of an individual's functional status. The assessment is used to verify if an individual meets nursing facility level of care and generates a resource utilization group (RUG) score. This score is used to establish an individual's services and supports budget.

B. The RUG score assigns an individual to one of 23 distinct groups in seven major groupings. Individuals are assigned to a group based on a hierarchy and are assigned to the highest group for which they qualify. The following seven major groupings will be utilized to determine the waiver assistance needed to complete various activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

1. Special Rehabilitation. Individuals in this group had at least 120 minutes of rehabilitation therapy (physical, occupational and/or speech) within the seven days prior to the interRAI assessment.

2. Extensive Services. Individuals in this group received one or more of the following services and have an ADL index of 7 or more:

- a. tracheostomy;
- b. ventilator or respirator;
- c. suctioning;
- d. parenteral/IV feeding only;
- e. combined oral and parenteral/tube feeding;

or

- f. IV medications.

3. Special Care. Individuals in this group must meet one of the following criteria:

- a. have one of the following conditions or treatments and have an ADL index of 7 or greater:

- i. stage 3 or 4 pressure ulcers and turning/positioning program;

- ii. combined oral and parenteral/tube feeding or nasogastric feeding only and aphasia;

- iii. fever with either vomiting, weight loss, dehydration, nasogastric tube or parenteral feeding, or pneumonia; or

- iv. radiation therapy; or

- b. have one of the following conditions and have an ADL index of 10 or greater:

- i. cerebral palsy;

- ii. multiple sclerosis;

- iii. quadriplegia; or

c. are receiving one of the extensive care services (as listed in B.2 above) and have an ADL index of 6 or less.

d. - h.iv. Repealed.

4. Clinically Complex. Individuals in this group have one of the following conditions or treatments:

- a. septicemia;
- b. dehydration;
- c. hemiplegia and an ADL index of 10 or greater;
- d. pneumonia;
- e. end-stage disease;
- f. comatose (confirmed by totally dependent in the four ADLs used in the ADL index);
- g. foot problems that limit/prevent walking;
- h. gastrointestinal (GI) or genitourinary (GU) bleeding;
- i. diabetes;
- j. combined oral and parenteral/tube feeding or nasogastric tube feeding only;
- k. chemotherapy;
- l. dialysis;
- m. transfusions;
- n. oxygen therapy; or

o. one of the special care conditions or treatments listed in 3.a above and an ADL index of 6 or less.

5. Impaired Cognition. Individuals in this group have a cognitive performance scale of 3 or more and an ADL index of 10 or less.

6. Behavior Problems. Individuals in this group have one or more of the following behavior problems and an ADL index of 10 or less:

- a. wandering;
- b. verbally abusive;
- c. physically abusive;
- d. socially inappropriate/disruptive;
- e. resists care;
- f. sexually inappropriate;
- g. hallucinations; or
- h. delusions.

7. Physical Function. Individuals who did not meet the criteria for any of the previous categories.

C. Based on the RUG score, the applicant/participant is assigned to one of the distinct groups and is eligible for a set annual services budget associated with that group.

1. If the applicant/participant disagrees with their annual services budget, they or their responsible representative may request a fair hearing to appeal the decision.

2. The applicant/participant may qualify for an increase in the annual services budget amount upon showing that:

a. one or more responses on the assessment are recorded incorrectly (except for the responses in the identification information, personal intake and initial history, assessment date and reason, and/or signature sections); or

b. they need an increase in the annual services budget to avoid entering into a nursing facility.

D. Each Community Choices Waiver participant shall be re-assessed at least annually.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3518 (December 2011), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1896 (October 2018), 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 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 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 1, 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 April 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 April 27, 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 April 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.

Dr. Courtney N. Phillips

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: P.O. Box 91030 Rule
Title Home and Community-Based Services Waivers
Baton Rouge, LA Community Choices Waiver
Resource Assessment and
Allocation Process

Date Rule
Takes Effect: June 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 have no programmatic fiscal impact to the state other than the cost of promulgation for FY 22-23. It is anticipated that \$972 (\$486 SGF and \$486 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 no effect on revenue collections other than the federal share of the promulgation costs for FY 22-23. It is anticipated that \$486 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)

The proposed rule amends the provisions governing the resource assessment and allocation process in the Community Choices Waiver (CCW) in order to update the language to reflect the current version of the international resident assessment instrument (interRAI) tool used by the Office of Aging and Adult Services (OAAS) to determine nursing facility level of care for OAAS programs. It is anticipated that implementation of this proposed rule will not result in costs to CCW providers in FY 22-23, FY 23-24, and FY 24-25, but will be beneficial by ensuring that the current requirements for interRAI assessments are promulgated in the *Louisiana Administrative Code*.

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

03/06/23
Date of Signature

Evan Brassfield, Interim Deputy
Legislative Fiscal Officer or Designee *Fiscal Officer*

3/7/23
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).

The proposed rule amends the provisions governing the resource assessment and allocation process in the Community Choices Waiver (CCW) in order to update the language to reflect the current version of the international resident assessment instrument (interRAI) tool used by the Office of Aging and Adult Services (OAAS) to determine nursing facility level of care for OAAS programs.

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

The Office of Aging and Adult Services (OAAS) currently uses an updated version of the uniform international resident assessment instrument (interRAI) tool to determine nursing facility level of care for OAAS programs. The Department of Health, Bureau of Health Services Financing and OAAS propose to amend the provisions governing the resource assessment and allocation process in the Community Choices Waiver in order to update the language regarding interRAI assessments.

- 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 22-23. In FY 22-23, \$972 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	\$972	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$972	\$0	\$0
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.

In FY 22-23, \$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 23	FY 24	FY 25
State General Fund	\$486	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds	\$486	\$0	\$0
Other (Specify)			
TOTAL	\$972	\$0	\$0

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 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	\$486	\$0	\$0
Local Funds			
TOTAL	\$486	\$0	\$0

*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.

In FY 22-23, \$486 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.

The proposed rule amends the provisions governing the resource assessment and allocation process in the Community Choices Waiver (CCW) in order to update the language to reflect the current version of the international resident assessment instrument (interRAI) tool used by the Office of Aging and Adult Services (OAAS) to determine nursing facility level of care for OAAS programs.

- 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 to CCW providers in FY 22-23, FY 23-24, and FY 24-25, but will be beneficial by ensuring that the current requirements for interRAI assessments are promulgated in the *Louisiana Administrative Code*.

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.