

NOTICE OF INTENT

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

Home and Community-Based Services Waivers  
Residential Options Waiver  
Reserved Capacity Group  
(LAC 50:XXI.16107,16343,16705 and 16901)

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.16107, \$16343, \$16705 and \$16901 under 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 amended the provisions governing the Residential Options Waiver (ROW) in order to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity, reduce reimbursement rates, adopt criteria for crisis diversion, revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions

governing the developmental disabilities request for services registry (*Louisiana Register*, Volume 41, Number 10). The department now proposes to amend the provisions governing the ROW to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXI. Home and Community Based Services Waivers**

**Subpart 13. Residential Options Waiver**

**Chapter 161. General Provisions**

**§16107. Programmatic Allocation of Waiver Opportunities**

A. - 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.

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:xxx (October 2015), LR 42:

**Chapter 163. Covered Services**

**§16343. Adult Day Health Care Services**

A. Adult day health care (ADHC) services shall be furnished as specified in the POC and at an ADHC facility in a non-institutional, community-based setting encompassing health, medical, and social services needed to ensure the optimal functioning of the participant.

B. ADHC services include:

1. transportation between the participant's place of residence and the ADHC, in accordance with licensing standards;
2. assistance with activities of daily living;
3. health and nutrition counseling;
4. an individualized exercise program;
5. an individualized goal-directed recreation program;
6. health education classes;
7. individualized health/nursing services; and
8. meals.

a. Meals shall not constitute a full nutritional regimen (three meals per day), but shall include a minimum of two snacks and a hot, nutritious lunch.

C. The number of participants included in the service per day shall be determined by the facility's licensed capacity and attendance. The average capacity per facility is 49 participants.

D. Nurses shall be involved in the participant's service delivery as specified in the POC or as needed. The ADHC shall develop an individualized service plan based on the participant's POC. If the individualized service plan requires certain health and nursing services, the nurse on staff shall ensure that the services are delivered while the participant is at the ADHC facility.

E. ADHC services shall be provided no more than 10 hours per day and no more than 50 hours per week.

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 for Citizens with Developmental Disabilities, LR 42:

**Chapter 167. Provider Participation**

**§16701. General Provisions**

A. - F. ...

G. Providers of ADHC services must:

1. be licensed as ADHC providers by the state of Louisiana in accordance with R.S. 40:2120.41-2120.47;
2. comply with all of the department's rules and regulations; and
3. be enrolled as an ADHC provider with the Medicaid program.

a. ADHC facility staff shall meet the requirements of department rules and regulations, as well as state licensing provisions.

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 33:2455 (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:xxxx (October 2015), LR 42:

**Chapter 169. Reimbursement**

**§16901. Reimbursement Methodology**

A. - A.5.f. ...

6. support coordination;

7. - 7.a. ...

b. micro-enterprise; and

8. adult day health care.

B. - L.l.d. ...

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: xxx (October 2015), 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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to, and the quality of, Residential Options Waiver 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 may 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 reducing health care cost to families through improved access to waiver services.

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 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.

Kathy H. Kliebert

Secretary



FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: Robert Andrepont Dept.: Health and Hospitals  
Phone: 342-8769 Office: Bureau of Health Services  
Financing

Return P.O. Box 91030  
Address: Baton Rouge, LA Rule Title: Home and Community-Based  
Services Waivers  
Residential Options Waiver  
Reserved Capacity Group

Date Rule Takes Effect: January 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.

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

*It is anticipated that the implementation of this proposed rule will result in estimated state general fund net programmatic costs of \$63,092 for FY 15-16, \$676,871 for FY 16-17 and \$815,384 for FY 17-18. 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. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.17 percent in FY 15-16 and 62.07 percent in FY 16-17 and FY 17-18.*

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 a net increase in federal revenue collections by approximately \$103,443 for FY 15-16, \$1,107,657 for FY 16-17 and \$1,334,324 for FY 17-18. It is anticipated that \$378 will be expended in FY 15-16 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.17 percent in FY 15-16 and 62.07 percent in FY 16-17 and FY 17-18.*

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

*This proposed Rule amends the provisions governing the Residential Options Waiver (ROW) in order to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW. It is anticipated that implementation of this proposed rule will have a net increase in programmatic expenditures in the Medicaid program for ROW services by approximately \$165,779 for FY 15-16, \$1,784,528 for FY 16-17 and \$2,149,708 for FY 17-18, but no correlating savings in the Adult Day Health Care and Community Choices Waivers as the vacated slots are anticipated to be filled at a later time.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

*It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.*



\_\_\_\_\_  
Signature of Agency Head  
or Designee



\_\_\_\_\_  
Legislative Fiscal Officer  
or Designee

J. Ruth Kennedy, Medicaid Director  
Typed name and Title of  
Agency Head or Designee

10-9-15  
Date of Signature



\_\_\_\_\_  
DHH/BHSF Budget Head

10/9/15  
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 Residential Options Waiver (ROW) in order to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW.*

- 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 amended the provisions governing the Residential Options Waiver (ROW) in order to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity, reduce reimbursement rates, adopt criteria for crisis diversion, revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions governing the developmental disabilities request for services registry (Louisiana Register, Volume 41, Number 10). The department now proposes to amend the provisions governing the ROW to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW.*

- 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.

*Yes. This proposed rule will result in a net increase in program expenditures for ROW services by approximately \$166,535 for FY 15-16, \$1,784,528 for FY 16-17 and \$2,149,708 for FY 17-18. In FY 15-16, \$756 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)  If yes, attach documentation.  
(b)  If no, provide justification as to why this rule change should be published at this time.

*Act 16 of the 2015 Regular Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers for Medicaid covered services, and thereby authorizes the expenditure of these funds. This rule change should be published at this time to ensure waiver participants receive the most appropriate, cost-effective services through the appropriate waiver program to ensure greater access to services designed to support the participant's needs.*

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	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$165,779	\$1,784,528	\$2,149,708
REPAIR & CONSTR.			
POSITIONS (#)			
<b>TOTAL</b>	<b>\$166,535</b>	<b>\$1,784,528</b>	<b>\$2,149,708</b>

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.

*The expenses reflected above are the estimated net increases in program expenditures for the Residential Options Waiver. In FY 15-16, \$756 is included 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 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	\$63,092	\$676,871	\$815,384
SELF-GENERATED			
FEDERAL FUND	\$103,443	\$1,107,657	\$1,334,324
OTHER (Specify)			
<b>Total</b>	<b>\$166,535</b>	<b>\$1,784,528</b>	<b>\$2,149,708</b>

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	\$103,443	\$1,107,657	\$1,334,324
LOCAL FUNDS			
<b>Total</b>	<b>\$103,443</b>	<b>\$1,107,657</b>	<b>\$1,334,324</b>

\*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.

*The amounts reflected above are the estimated net increases in the federal share of program expenditures for Residential Options Waiver services. In FY 15-16, \$378 is included for the federal expense for promulgation of this proposed rule and the final rule.*

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 Residential Options Waiver (ROW) in order to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW.*

- 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 have a net increase in programmatic expenditures in the Medicaid program for ROW services by approximately \$165,779 for FY 15-16, \$1,784,528 for FY 16-17 and \$2,149,708 for FY 17-18, but no correlating savings in the Adult Day Health Care and Community Choices Waivers as the vacated slots are anticipated to be filled at a later time.*

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.

*It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.*