

**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  
Complex Care Services  
(LAC 50:XXI.Chapter 137 and 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.Chapter 137 and §13933 and §14301 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 promulgated an Emergency Rule which amended the provisions governing the New Opportunities Waiver (NOW) in order to provide additional reimbursement for services rendered to participants with complex medical and behavioral needs, and to align the minimum age requirement for participation with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (*Louisiana Register*, Volume 44, Number 10). This proposed Rule

continues the provisions of the October 20, 2018 Emergency Rule.

**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, the same hours on the same day as any other NOW service:

1. ...
2. supported independent living;
3. complex care service; and
  - a. - e. Repealed.
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.

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 44:00 (January 2018), LR 45:

**§13703. Participant Qualifications and Admissions Criteria**

A. In order to qualify for the New Opportunities Waiver (NOW), an individual must be three years of age or older and meet all of the following criteria:

1. - 8. ...

B. - C. 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 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:96 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2528 (December 2017), LR 45:

**§13705. Denial of Admission or Discharge Criteria**

A. Individuals shall be denied admission to or discharged from the NOW if one of the following criteria is met:

1. - 6. ...

7. the individual fails to cooperate in the eligibility determination/re-determination process and in the development or implementation of the approved POC;

8. continuity of services is interrupted as a result of the individual not receiving a NOW service during a period of 30 or more consecutive days. This does not include interruptions in NOW services because of hospitalization, institutionalization (such as ICFs-DD or nursing facilities), or non-routine lapses in services where the family agrees to provide all needed or paid natural supports. There must be documentation from the treating physician that this interruption will not exceed 90 days. During this 90-day

period, the Office for Citizens with Developmental Disabilities (OCDD) will not authorize payment for NOW services; and/or

9. there is no justification, based on a uniform needs-based assessment and a person-centered planning discussion, that the NOW is the only OCDD waiver that will meet the participant's needs.

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 30:1202 (June 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities LR 40:69 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:51 (January 2018), LR 45:

## **Chapter 139. Covered Services**

### **§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.

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:

## **Chapter 143. Reimbursement**

### **§14301. Unit of Reimbursement**

A. - B.3. ...

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

1. - 2. ...

3. supported employment-follow along;

4. adult companion care; and

5. complex care.

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:

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 or autonomy as described in R.S. 49:972 as it will provide services for participants with complex medical and behavioral needs and allow individuals under 21 to access home and community-based NOW 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 as it will provide services for participants with complex medical and behavioral needs and allow individuals under 21 to access home and community-based NOW 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, 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 a new service.

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, November 29, 2018 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: Veronica Dent  
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Bureau of Health Services  
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Rule Title:

Home and Community-Based  
Services Waivers  
New Opportunities Waiver  
Complex Care Services

Date Rule Takes Effect: October 20, 2018

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 implementation of this proposed rule will increase programmatic costs to the state by approximately \$125,373 for FY 18-19, \$1,114,345 for FY 19-20 and \$1,646,113 for FY 20-21. In FY 18-19, the state match requirements shall be met with New Opportunities Waiver (NOW) Fund dollars and utilized to secure federal match to provide the add-on payments for complex care. In FY 19-20 and FY 20-21, the state match requirements shall be met through the Department's budget appropriation from the state general fund. It is anticipated that \$1,296 (\$648 SGF and \$648 FED) will be expended in FY 18-19 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 64.67 percent in FY 18-19 and 65.79 percent in FY 19-20 and FY 20-21.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

*It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$228,953 for FY 18-19, \$2,143,021 for FY 19-20 and \$3,165,676 for FY 20-21. The proposed rule will also increase revenue collections by approximately \$125,373 in FY 18-19 from the NOW Fund. It is anticipated that \$648 will be collected in FY 18-19 for the federal share of the 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 64.67 percent in FY 18-19 and 65.79 percent in FY 19-20 and FY 20-21.*

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

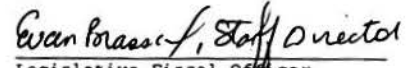
*This proposed Rule continues the provisions of the October 20, 2018 Emergency Rule which amended the provisions governing the New Opportunities Waiver (NOW) in order to add complex care to the home and community-based services covered under the NOW, and to align the minimum age requirement for participation with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). It is anticipated that implementation of this proposed Rule will be beneficial to NOW participants in need of complex medical and behavioral health services. The proposed rule also benefits younger recipients by reducing the participant age limit to align with the approved waiver. This proposed rule will be beneficial to providers of complex care services as a result of the additional reimbursement for these services. It is anticipated that implementation of this proposed rule will increase NOW expenditures by approximately \$353,030 for FY 18-19, \$3,257,366 for FY 19-20 and \$4,811,789 for FY 20-21 due to the additional payments to providers of complex care services.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

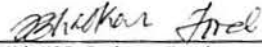
*This rule has no known effect on competition and employment.*

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

Jen Steele, Medicaid Director  
Typed name and Title of  
Agency Head or Designee

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

10/9/18  
Date of Signature

  
\_\_\_\_\_  
LDH/BHSF Budget Head

10/09/18  
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 continues the provisions of the October 20, 2018 Emergency Rule which amended the provisions governing the New Opportunities Waiver (NOW) in order to add complex care to the home and community-based services covered under the NOW, and to align the minimum age requirement for participation with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).*

- 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the New Opportunities Waiver (NOW) in order to add payments for complex care to the home and community-based services covered under the NOW, and to align the minimum age requirement for participation with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (Louisiana Register, Volume 44, Number 10). This proposed Rule continues the provisions of the October 20, 2018 Emergency Rule.*

- 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. It is anticipated that implementation of this proposed rule will increase programmatic costs to the state by approximately \$354,326 for FY 18-19, \$3,257,366 for FY 19-20 and \$4,811,789 for FY 20-21. It is anticipated that \$1,296 will be expended in FY 18-19 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 2 of the 2018 Second Extraordinary Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medical Assistance Program, and thereby, authorizes the expenditure of these funds.*

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 18-19	FY 19-20	FY 20-21
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,296	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$353,030	\$3,257,366	\$4,811,789
REPAIR & CONSTR.			
POSITIONS (#)			
<b>TOTAL</b>	<b>\$354,326</b>	<b>\$3,257,366</b>	<b>\$4,811,789</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 increases in estimated programmatic expenditures in the New Opportunities Waiver. In FY 18-19, \$1,296 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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND	\$0	\$1,114,345	\$1,646,113
SELF-GENERATED			
FEDERAL FUND	\$228,953	\$2,143,021	\$3,165,676
OTHER (Specify) NOW Funds used as an offset to the State General Fund	\$125,373	\$0	\$0
<b>Total</b>	<b>\$354,326</b>	<b>\$3,257,366</b>	<b>\$4,811,789</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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS* NOW Funds used as an offset to the State General Fund	\$125,373	\$0	\$0
FEDERAL FUNDS	\$648	\$0	\$0
LOCAL FUNDS			
<b>Total</b>	<b>\$126,021</b>	<b>\$0</b>	<b>\$0</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 increases in the federal share of programmatic expenditures for the New Opportunities Waiver and the revenue collected from the NOW fund. In FY 18-19, \$648 will be collected for the federal share of the administrative 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 continues the provisions of the October 20, 2018 Emergency Rule which amended the provisions governing the New Opportunities Waiver (NOW) in order to add the complex care service to the home and community-based services covered under the NOW and to align the minimum age requirement for participation with the waiver amendment approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).*

- 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 may have a positive impact to participants in need of complex medical and behavioral health services. The proposed rule also benefits recipients age 3 and above who will no longer qualify for NOW services if the department's previous decision to raise the participant age limit is not reversed to align with the approved waiver in compliance with the directive from CMS. There may be a positive fiscal impact to providers of complex care service as a result of the additional reimbursement for these services. It is anticipated that implementation of this proposed rule will increase NOW expenditures by approximately \$353,030 for FY 18-19, \$3,257,366 for FY 19-20 and \$4,811,789 for FY 20-21 due to the additional payments to providers of complex care services.*

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.*