

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; ~~and~~

3. ~~skilled nursing services. Skilled nursing services may be provided with:~~
complex care service; and
~~a. substitute family care;~~
~~b. supported independent living;~~
~~c. day habilitation;~~
~~d. supported employment (all three modules);~~
~~and/or~~
~~e. prevocational services.~~ 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Repealed.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 athe New Opportunities Waiver (NOW), an individual must be ~~21~~three years of age or older and meet all of the following criteria:

1. - 8. ...

~~B. Individuals under the age of 21 who receive NOW services prior to promulgation of this final Rule will be grandfathered in to the NOW program. Individuals under the age of 21 who are transitioning to NOW services within 90 days of promulgation of this final Rule will retain their NOW offer and be allowed to transition to the NOW program.~~

~~C. Individuals age 18 through 20 may be offered a funded NOW opportunity if the results of the uniform needs-based assessment and person-centered planning discussion determine that the NOW is the most appropriate waiver. These offers must be approved by the OCDD assistant secretary/designee.~~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; ~~and/or~~

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; ~~and~~

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