

NOTICE OF INTENT

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

Home and Community-Based Services Waivers
Supports Waiver
Allocation of Waiver Opportunities
(LAC 50:XXI.5301, 5501, 5505, 5701, 5901)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.5301, §5501, §5701, and §5901 and to adopt §5505 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 Development Disabilities amended the provisions governing the Supports Waiver in order to revise the: 1) covered services; 2) allocation of waiver opportunities; 3) target population; and 4) reimbursement methodology (*Louisiana Register*, Volume 40, Number 12).

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Development Disabilities has now determined that it is necessary to amend

the provisions governing the Supports Waiver in order to implement a tiered waiver allocation process which establishes one Request for Services Registry for all OCDD waivers and is centered on needs-based assessments and person-centered planning.

Title 50
PUBLIC HEALTH MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 5. Supports ~~w~~Waiver

Chapter 53. General Provisions

§5301. Purpose

A. - A.3. ...

B. Allocation of Waiver Opportunities. Waiver
~~opportunities (slots)~~ The intellectual/developmental disabilities request for services registry, hereafter referred to as "the registry," shall be offered on a first-come, first-served basis to individuals who meet the participant qualifications for this waiver with the exception of the 70 opportunities designated to the two categories as specified under §5501 used to identify persons with intellectual and/or developmental disabilities who are waiting for an OCDD waiver opportunity.

1. Individuals who are found eligible for developmental disabilities services using standardized tools, and who request waiver services will be added to the registry.

2. The request for services registry (RFSR) is

arranged by the urgency of need and date of application for developmentally disabled (DD) waiver services.

3. Funded OCDD waiver opportunities will be offered based on the following two priority groups:

a. Individuals living at Pinecrest Supports and Services Center or in a publicly operated ICF-ID when it was transitioned to a private ICF-ID through a cooperative endeavor agreement, or their alternates. Alternates are defined as individuals living in a private ICF-ID who will give up the private ICF-DD bed to an individual living at Pinecrest or to an individual who was living in a publicly operated ICF-ID when it was transitioned to a private ICF-ID through a cooperative endeavor agreement. Individuals requesting to transition from either facility listed above are awarded the appropriate waiver when one is requested, and their health and safety can be assured in an OCDD home and community-based waiver program.

i. The bed being vacated by the alternate in the private ICF-ID must be reserved for 14 days for the placement of a person being discharged from a publicly-operated facility. The person's discharge from a publicly-operated facility and his/her subsequent placement in a private ICF-ID is to occur as close as possible to the actual discharge of the alternate from the private ICF-ID and is not to exceed 14 days from the date of the alternate's discharge and certification for

the waiver. The bed may be held vacant beyond the 14 days with the concurrence of the private ICF-ID provider.

ii. The funded waiver opportunity will be reserved for a period not to exceed 120 days. However, this 120-day period may be extended as needed.

b. Individuals on the registry who have the highest level of need and the earliest registry date shall be notified in writing when a funded OCDD waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment.

C. The Office for Citizens with Development Disabilities has the responsibility to monitor the utilization of Supports Waiver opportunities. At the discretion of OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of citizens with developmental disabilities in the State of Louisiana.

D. Funded waiver opportunities will only be allocated to individuals who successfully complete the financial and medical eligibility process required for waiver certification.

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, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006), amended

LR 40:2583 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

Chapter 55. Target Population

§5501. Participant Qualifications and Admissions Criteria

A. - A.8. ...

~~B. Two separate categories within the supports waiver have been established for 70 opportunities with specific criteria established for each.~~

~~1. Transition from School to Work~~

~~a. Individuals must meet the following criteria for participation in the 50 transition from school to work opportunities:~~

~~i. have a developmental disability as specified in R.S. 28:451.2;~~

~~ii. be on the developmental disabilities request for services registry (DDRFSR), unless otherwise specified through programmatic allocation in §5501;~~

~~iii. meet the financial eligibility requirements for the Medicaid Program;~~

~~iv. meet the requirements for an ICF/ID level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;~~

~~v. have assurance that health and welfare of the individual can be maintained in the community with the provision of supports waiver services;~~

~~vi. have justification, as documentation in the approved plan of care, that supports waiver services are appropriate, cost effective and represent the least restrictive environment for the individual;~~

~~vii. be a resident of Louisiana;~~

~~viii. be a citizen of the United States or a qualified alien;~~

~~ix. be exiting the school system;~~

~~x. desire an individual, integrated job in the community; and~~

~~xi. require supports and/or services to obtain and/or maintain employment in the community, specifically supported employment services.~~

~~b. Each human services authority or district/local governing entity (LGE) is responsible for the prioritization of the 50 transition from school to work opportunities.~~

~~c. Individuals who participate in the 50 transition from school to work opportunities are not required to have a protected request date on the DDRFSR, but must have a current statement of approval indicating they meet the ICF/ID~~

~~level of care.~~

~~d. All other supports waiver provisions apply to the 50 transition from school to work opportunities.~~

~~2. "Priority" Opportunity~~

~~a. Priority a change in circumstances of the individual and/or caregiver rendering the natural and community support system in place unable to meet the individual's needs and now requires services to sustain the individual in the community.~~

~~b. Individuals must meet the following criteria for participation in the 20 priority opportunities:~~

~~i. have a developmental disability as specified in R.S. 28:451.2;~~

~~ii. be on the developmental disabilities DDRFSR, unless otherwise specified through programmatic allocation in §5501;~~

~~iii. meet the financial eligibility requirements for the Medicaid Program;~~

~~iv. meet the requirements for an ICF/ID level of care which requires active treatment of a developmental disability under the supervision of a qualified developmental disability professional;~~

~~v. have assurance that health and welfare of the individual can be maintained in the community with the~~

~~provision of supports waiver services;~~

~~_____ vi. have justification, as documentation in the approved plan of care, that supports waiver services are appropriate, cost effective and represent the least restrictive environment for the individual;~~

~~_____ vii. be a resident of Louisiana; and~~

~~_____ viii. be a citizen of the United States or a qualified alien;~~

~~_____ ix. be designated by the Office for Citizens with Developmental Disabilities (OCDD) Human Services Authority or district/LGE as meeting the criteria for a "priority" opportunity.~~

~~_____ C. Each human services authority or district/LGE is responsible for the prioritization of these Priority opportunities.~~

~~_____ D. Determination of prioritization for a priority opportunity is defined as follows:~~

~~_____ 1. without requested supports, there is an immediate need for services due to out-of-home placement or homelessness or potential threat of out-of-home placement or homelessness due to a change in the individual's circumstances, including but not limited to, behavioral changes/challenges, problems with the law, or changes in his/her living arrangements or threat of losing his/her job;~~

~~2. without requested supports, there is an immediate need for services due to out-of-home placement or homelessness or potential threat of out-of-home placement or homelessness due to a change in the care giver's circumstances, including but not limited to, health issues, death, changes in job (i.e., being switched from night shift to day shift or being switched to different work location requiring more travel time) or other changes that effect the current situation; or~~

~~3. without requested supports, there is an immediate need for services due to out-of-home placement or homelessness or potential threat of out-of-home placement or homelessness due to some other family crisis which leaves the individual with no care giver support available, such as abuse/neglect or a second person in the household becomes disabled and must be cared for by the same care giver causing inability of the natural caregiver to continue necessary supports to assure health and safety of the individual.~~

~~E. Individuals who participate in the priority opportunities are not required to have a protected request date on the DDRFSR but they must have a current statement of approval indicating they meet the ICF/ID level of care.~~

~~F. All other supports waiver provisions apply to the priority opportunities.~~ B. - F. 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, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2583 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

§5505. Needs-Based Assessment

A. A uniform needs-based assessment in conjunction with person-centered planning is utilized in the service planning process for the individuals receiving or participating in an OCDD waiver. The results of this assessment activity shall be utilized to determine which OCDD waiver will be offered to the individual during the initial plan of care process.

1. The participant or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the specific OCDD waiver offered as a result of the needs-based assessment and person-centered planning process. If the participant disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

B. The needs-based assessment instrument(s) is designed to evaluate the practical support requirements of individuals with developmental disabilities in daily living, medical and behavioral areas including:

1. home living;
2. community living;
3. lifelong learning;
4. employment;
5. health and safety;
6. social activities; and
7. protection and advocacy.

C. The needs-based assessment instrument(s) is also used to evaluate the individual's support needs based on information and data obtained from the following four areas of the person's life:

1. Support needs scale measurements including:
 - a. material supports;
 - b. vision related supports;
 - c. hearing related supports;
 - d. supports for communicating needs;
 - e. positive behavior supports;
 - f. physicians supports;
 - g. professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and

h. stress and risk factors.

2. Living arrangements and program participation

including:

a. people living in the home;

b. natural supports in the home;

c. living environments; and

d. supports and service providers.

3. Medical and diagnostic information findings

including:

a. diagnoses;

b. medications and dosages; and

c. need for relief from pain or illness.

4. Personal satisfaction reports including:

a. agency supports provided at home;

b. work or day programs;

c. living environment;

d. family relationships; and

e. social relationships.

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 43:

Chapter 57. Covered Services

§5701. Supported Employment Services

A. - G.4. ...

H. Restrictions. Participants receiving individual supported employment services may also receive prevocational or day habilitation services. However, these services cannot be provided during the same service hours and cannot total more than five hours of services in the same day. Participants receiving group supported employment services may also receive prevocational or day habilitation services; however, these services cannot be provided in the same service day.

I. - J. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

Chapter 59. Provider Participation

§5901. General Provisions

A. - C.1. ...

2. Supported Employment Services. The provider must possess a valid certificate of compliance as a community rehabilitation provider (CRP) from Louisiana rehabilitation services or the certification and training as required per OCDD.

3. - 6. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:

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 the tiered waiver process will allow families with the highest urgency of need and earliest registry dates to access services more quickly.

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 the tiered waiver process will allow families with the highest urgency of need and earliest registry dates to access services more quickly.

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, October 26, 2017 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