

## **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  
Individual and Family Support Payments  
(LAC 50:XXI.13701,13902,13927,13933, 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.13701, §13927, and §14301, adopt §13902, and repeal §13933 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 propose to amend the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

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

1. ...

2. supported independent living; and

3. skilled nursing services.

a. Skilled nursing services may only be provided with:

i. substitute family care;

ii. supported independent living;

iii. day habilitation;

iv. supported employment (all three modules); and/or

v. prevocational services

4. - 4.e. Repealed.

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 44:50 (January 2018), LR 45:42 (January 2019), LR 46:

## **Chapter 139. Covered Services**

### **§13902 Individual and Family Support Supplemental Payments**

A. Supplemental payments will be made to licensed HCBS providers with a PCA module who support 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 supplemental payment provides additional funding to licensed HCBS providers with a PCA module who provide supports that focus on the prevention of deteriorating or worsening medical or behavioral conditions for individuals with complex needs.

2. The provider will be required to complete a screening tool and submit initial documentation as outlined in the program manual prior to qualifying for any supplemental

payment. The supplemental payment will be re-evaluated annually to determine ongoing need per program requirements.

3. The PCA providers must be licensed home and community-based services (HCBS) providers with a personal care attendant module in order to receive the supplemental payment, in addition to the criteria listed in §13902 B.

B. Determination Process: A PCA provider can qualify for a supplemental payment if the individual currently receiving qualified waiver services has a complex medical and/or behavioral need.

1. Complex Medical

a. Individuals must require at least two of the following non-complex tasks delegated by a registered nurse to a non-licensed direct service worker:

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 nasogastric tube);

- v. clean intermittent urinary catheterization;
- vi. obtaining a urinary specimen from a port of an indwelling urinary catheter;
- 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); or
- xi. other delegable non-complex tasks

as approved by OCDD in accordance with LAC 48:1 Chapter 92  
Subchapter D.

## 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, outside of the individual's weekly routine, such as work, school or participation in his/her community, is needed at least once per week; 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.), who have 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.).

C. The supplemental payment is not allowed for waiver participants who do not receive individual and family support (IFS) services.

D. The supplemental payment may not be approved for waiver participants receiving IFS hours in addition to 12 or more hours of skilled nursing per day.

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 46:

**§13927. Skilled Nursing Services**

A. - B. ...

C. Provider Qualifications. The provider must be licensed  
by the Department of Health as a home health agency.

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 30:1208 (June 2004), amended by the  
Department of Health and Hospitals, Office of the Secretary,  
Office for Citizens with Developmental Disabilities, LR 33:1651  
(August 2007), amended by the Department of Health and  
Hospitals, Bureau of Health Services Financing and the Office  
for Citizens with Developmental Disabilities, LR 40:77 (January  
2014), amended by the Department of Health, Bureau of Health  
Services Financing and the Office for Citizens with  
Developmental Disabilities, LR 44:56 (January 2018), LR 46:

**§13933 Complex Care**

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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:43 (January 2019), repealed LR 46:

## **Chapter 143. Reimbursement**

### **§14301. Unit of Reimbursement**

A. - B.3. ...

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

1.- 4. ...

5. individual and family support supplemental payment.

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 45:44 (January 2019), LR 46:

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:965.2 et seq.

#### **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, 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 the same services they already render.

#### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

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 October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 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 October 12, 2020. 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:	<u>Veronica Dent</u>	Dept.:	<u>Health</u>
Phone:	<u>342-3238</u>	Office:	<u>Bureau of Health Services Financing</u>
Return Address:	<u>PO Box 91030</u>	Rule Title	<u>Home and Community-Based Services</u>
	<u>Baton Rouge, LA</u>		<u>Waivers</u>
			<u>New Opportunities Waiver</u>
			<u>Individual and Family Support Payments</u>
		Date Rule Takes Effect:	<u>December 20, 2020</u>

SUMMARY  
(Use complete sentences)

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 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 result in increased state costs of approximately \$269, 973 for FY 20-21, \$1,547,696 for FY 21-22 and \$2,769,618 for FY 22-23. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 20-21 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 increase federal revenue collections by approximately \$554,499 for FY 20-21, \$3,233,572 for FY 21-22, and \$5,786,509 for FY 22-23. It is anticipated that \$594 will be collected in FY 20-21 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)

This proposed rule amends the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service. It is anticipated that this proposed Rule will be beneficial to providers because of an increase in supplemental payments. It is anticipated that implementation of this proposed Rule will increase expenditures for NOW services by approximately \$823,284 for FY 20-21, \$4,781,268 for FY 21-22, and \$8,556,127 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This rule has no known effect on competition and employment.

  
\_\_\_\_\_  
Signature of Agency Head or Designee  
  
Ruth Johnson, Medicaid Executive Director  
Typed Name & Title of Agency Head or Designee  
  
9/10/20  
Date of Signature

  
\_\_\_\_\_  
Legislative Fiscal Officer or Designee  
  
9/10/20  
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).

This proposed rule amends the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

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

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

- 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 result in increased programmatic costs of approximately \$824,472 for FY 20-21, \$4,781,268 for FY 21-22, and \$8,556,127 for FY 22-23. In FY 20-21, \$1,188 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)  X  NO. If no, provide justification as to why this rule change should be published at this time

Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. This action is being taken because of Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

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 21	FY 22	FY 23
Personal Services			
Operating Expenses	\$1,188	\$0	\$0
Professional Services			
Other Charges	\$823,284	\$4,781,268	\$8,556,127
Equipment			
Major Repairs & Constr.			
<b>TOTAL</b>	<b>\$824,472</b>	<b>\$4,781,268</b>	<b>\$8,556,127</b>
<b>POSITIONS (#)</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 increases in expenditures in the Medicaid program. In FY 20-21, \$1,188 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 21	FY 22	FY 23
State General Fund	\$269,973	\$1,547,696	\$2,769,618
Agency Self-Generated			
Dedicated			
Federal Funds	\$554,499	\$3,233,572	\$5,786,509
Other (Specify)			
<b>TOTAL</b>	<b>\$824,472</b>	<b>\$4,781,268</b>	<b>\$8,556,127</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 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 governmental 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 21	FY 22	FY 23
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$554,499	\$3,233,572	\$5,786,509
Local Funds			
TOTAL	\$554,499	\$3,233,572	\$5,786,509

\*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.

The amounts reflected above are the estimated increase in the federal share of programmatic expenditures for the Medicaid program. In FY 20-21, \$594 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.

This proposed rule amends the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

- 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 this proposed Rule will be beneficial to providers by increasing reimbursements. It is anticipated that implementation of this proposed Rule will increase expenditures for NOW services by approximately \$823,284 for FY 20-21, \$4,781,268 for FY 21-22, and \$8,556,127 for FY 22-23.

**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.