

## DECLARATION OF EMERGENCY

### 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 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 Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend 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.

This action is being taken to prevent imminent peril to the public health, safety or welfare of New Opportunities Waiver participants with complex medical and/or behavioral health support needs. The provisions of this Rule are critical in promoting the health and well-being of individuals who currently have a very difficult time locating a provider who can render them quality and appropriate services in the community. This Emergency Rule will also help to reduce the long-range health care cost associated with these individuals not receiving the proper treatment in the more cost-effective, community setting. It is estimated that implementation of this Emergency Rule will increase NOW expenditures by approximately \$353,030 for state fiscal year 2018-2019.

Effective October 20, 2018, the Department of Health, Bureau of Health Services Financing amends the provisions governing the New Opportunities Waiver 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 CMS-approved waiver amendment.

#### 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 44:50 (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

b. 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.

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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

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