RULE

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 have amended 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 Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

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a. – e. Repealed.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B. – C. Repealed.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

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.

Rebekah E. Gee MD, MPH

Secretary

RULE

Department of Health
Bureau of Health Services Financing

Medicaid Eligibility
Children's Health Insurance Program Reauthorization Act
Option for Lawfully Resident Children
(LAC 50:III.2329 and 2523)

The Department of Health, Bureau of Health Services Financing has to adopted LAC 50:III.2329 and to repromulgate the provisions of the June 20, 1998 Rule governing Medicaid Eligibility for non-citizens in order to adopt this Rule into LAC 50:III.2523, 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. This Rule is hereby adopted on the day of promulgation.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule which adopted provisions to provide regular Medicaid coverage to optional qualified aliens (hereafter referred to as "qualified non-citizens"), who were in the United States prior to August 22, 1996, who meet all eligibility criteria and requiring a five-year waiting period for qualified non-citizens, entering the United States on or after August 22, 1996 (*Louisiana Register*, Volume 24, Number 6).

The Children's Health Insurance Program Reauthorization Act (CHIPRA)of 2009 provides states with the option to eliminate the five-year waiting period and provide coverage under the

Medical Assistance Program to a new eligibility group consisting of children up to age 19 who are lawfully residing in the United States, and for which an enhanced federal medical assistance percentage (FMAP) rate is available.

The Department of Health, Bureau of Health Services Financing hereby amends the provisions governing Medicaid eligibility to adopt the CHIPRA option which will eliminate the five-year waiting period and provide coverage to lawfully residing children. This proposed Rule will also repromulgate the provisions of the June 20, 1998 Rule governing Medicaid eligibility for qualified non-citizens to ensure that these provisions are promulgated in the *Louisiana Administrative Code* in a clear and concise manner.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2329. Lawfully Resident Children

A. The Children’s Health Insurance Program Reauthorization Act (CHIPRA) of 2009, Public Law No. 111-3, established provisions which allow states the option of providing Medicaid and Children’s Health Insurance Program (CHIP) coverage to children up to age 19 who are lawfully residing in the United States, including those within their first five years of having certain legal status.

B. The Department shall utilize the CHIPRA Option under P.L. 111-3 provisions for the enrollment of children, up to age 19, who are lawfully residing in the United States.

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, LR 45:

Chapter 25. Eligibility Factors

§2523. Citizenship

A. Qualified Non-Citizens

1. The department hereby adopts criteria for the coverage of qualified non-citizens pursuant to the provisions of §401 of the Personal and Work Opportunity Act of 1996 (P.L. 104-193) as amended by the Balanced Budget Act of 1997 (P.L. 105-33).

2. The department elects to provide regular Medicaid coverage to optional qualified non-citizens who were in the United States prior to August 22, 1996, who meet all eligibility criteria.

3. Qualified non-citizens entering the United States on or after August 22, 1996 are not eligible for Medicaid coverage for five years after entry into the United States.

a. Such qualified non-citizens are eligible for emergency services only.

b. Upon expiration of the five-year period, coverage for regular Medicaid services shall be considered if the qualified non-citizen meets all eligibility criteria.

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, 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.

Rebekah E. Gee MD, MPH

Secretary

RULE

Department of Health
Bureau of Health Services Financing

Nurse Licensure Compact
(LAC 48:I.Chapter 88)

The Department of Health, Bureau of Health Services Financing has adopted LAC 48:I.Chapter 88 as authorized by R.S. 36:254 and R.S. 37:1018-1020. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

Title 48.
PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification

Chapter 88. Nurse Licensure Compact

§8801. Definitions

Department-the Louisiana Department of Health (LDH), the department.

Health Standards Section (HSS)-the section in LDH responsible for licensing health care facilities and agencies, certifying facilities and agencies applying for participation in the Medicaid (title XIX) and Medicare (title XVIII) programs, and conducting surveys and inspections.

Home State-the party state which is the nurse's primary state of residence.

Licensing Board-a party state's regulatory body responsible for issuing nurse licenses.

Multi-State License-a license to practice as a registered nurse (RN) or a licensed practical nurse/licensed vocational nurse (LPN/LVN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multi-state licensure privilege.

Multi-State Licensure Privilege-a legal authorization associated with a multistate license permitting the practice of nursing as either an RN or LPN/LVN in a remote state.

Nurse-registered nurse (RN) or licensed practical nurse/licensed vocational nurse (LPN/LVN), as defined by each party state's practice laws.

Nurse Licensure Compact (NLC)-Part V of Chapter 11 of Title 37 of the Louisiana Revised Statutes of 1950, comprised of R.S. 37:1018 through 1020.

Party State-any state that has adopted the Nurse Licensure Compact.

Remote State-a party state other than the home state.

Single-State License-a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multi-state licensure privilege to practice in any other party state.

State-a state, territory or possession of the United States and the District of Columbia.

State Practice Laws-a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice and create the methods and grounds for imposing discipline. State practice laws do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 37:1018-1020.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:

§8803. General Administration

A. Pursuant to R.S. 37:1018-1020 et seq., all health care entities licensed and/or certified by the Health Standards Section of LDH including, but not limited to, those specified in §8803.B.1-25 shall:

1. register with the National Council of State Boards of Nursing’s (NCSBN) Nursys e-Notify system; and

2. provide required nurse data for collection of aggregate data from employees on the number and geographic representation of registered nurses (RNs) and licensed practical nurses/licensed vocational nurses (LPNs/LVNs) employed in Louisiana practicing pursuant to a multi-state or single state

license, as determined by the Louisiana State Board of Nursing (LSBN) and the Louisiana State Board of Practical Nurse Examiners (LSBPNE).

B. Once registered, the licensed facility/agency, the LSBN and the LSBPNE shall have real-time access to nurse licensure verification including expirations, upcoming renewals and discipline from all nurse licensure compact states. The real-time notifications shall be delivered to employer inboxes automatically and immediately available to the requisite nursing boards prior to an RN or LPN/LVN furnishing any such services in one or more of the following licensed and/or certified health care facilities and agencies:

1. nursing facilities (NF);

2. home health agencies (HHA);

3. hospice agencies;

4. emergency medical transportation services (EMTS);

5. behavioral health services (BHS) providers;

6. home and community-based services (HCBS) providers;

7. adult day health care (ADHC) providers;

8. intermediate care facility for people with developmental disabilities (ICF-DD);

9. adult residential care providers (ARCP);

10. hospitals;

11. rural health clinics (RHC);

12. outpatient physical therapy (OPT) clinics;

13. comprehensive outpatient rehabilitation facilities (CORF);

14. pediatric day health care (PDHC) facilities;

15. end stage renal disease (ESRD) clinics;

16. federally qualified health centers (FQHC);

17. forensic supervised transitional residential and aftercare (FSTRA) facilities;

18. psychiatric residential treatment facilities (PRTF);

19. therapeutic group homes (TGH);

20. ambulatory surgical centers (ASC);

21. outpatient abortion facilities (OAF);

22. support coordination agencies (SCA);

23. adult brain injury (ABI) facilities;

24. community mental health centers (CMHC); and

25. portable x-ray providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 37:1018-1020.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:

§8805. Licensed Facility and Agency Requirements

A. In accordance with federal, state and local laws, rules and regulations, agencies and facilities licensed by the department shall comply with state nurse licensure laws to ensure the health and safety of the public.

B. The governing body of the health care facility or agency licensed by the department shall be responsible for registering with the NCSBN’s Nursys e-Notify system (or other system as designated by the state board of nursing).

C. Facilities and agencies licensed by the department as health care providers shall report data to the applicable state nurse licensing board on the number and geographic representation of RNs and LPNs/LVNs employed by the licensed health care facility or agency practicing pursuant to a multi-state license, as determined by the respective licensing board.

D. The report shall be completed prior to an RN or LPN/LVN furnishing any nursing services in this state. Failure of an employer to submit this data to the board shall not be a basis for disciplinary action against or restriction of the multi-state license of any RN or LPN/LVN.

E. The governing body of the licensed health care facility or agency shall be responsible for the development, implementation and enforcement of policies and procedures related to §8805.A-D, as applicable to the facility or agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 37:1018-1020.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:

Rebekah E. Gee MD, MPH

Secretary