

Activities of Daily Living (ADLs)—the functions or tasks which are performed by an individual in a typical day, either independently or with supervision/assistance. Activities of daily living may include, but are not limited to, bathing, dressing, eating, grooming, walking, transferring and toileting.

Assistance with Activities of Daily Living—services that provide assistance with activities of daily living. Such assistance may be the actual performance of the task for the individual, or may provide hands-on assistance with the performance of the tasks, or may include supervision and prompting to allow the individual to self-perform such tasks.

Board—the Louisiana State Board of Nursing.

Daily Monitoring—activities pursued on a daily basis by a family member, direct service worker and/or other health care providers for the purposes of collecting critical information needed to assure the individual's welfare. Monitoring activities may include, but are not limited to face-to-face home visits with the person receiving assistance or services and/or daily telephone calls with the individual.

DAL—Division of Administrative Law or its successor.

Department—the Louisiana Department of Health and Hospitals (DHH).

Direct Service Worker (DSW)—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports. Examples of direct service workers employed or contracted in a licensed and/or certified health care setting include, but are not limited to:

1. patient care technicians;
2. hospital aides;
3. unlicensed assistive personnel (UAPs);
4. home health aides;
5. hospice aides;
6. direct care workers;
7. mental health technicians;
8. mental health aides;
9. mental health orderlies;
10. nursing aides or hospital orderlies;
11. nursing assistants;
12. patient care aides; and/or
13. any persons hired as unlicensed direct care staff that meet the provisions of this Chapter.

Chapter 92. Direct Service Worker Registry

Subchapter A. General Provisions

§9201. Definitions

Able to Self-Direct the Services—a person's ability to make decisions about his or her own care and actively participate in the planning and directing of that care.

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse;
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the health, moral or emotional well-being of the individual being supported is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

NOTE: Those persons who are listed on the Certified Nurse Aide Registry and who are employed as certified nurse aides in a licensed and/or certified nursing facility and/or a skilled nursing facility within a hospital are not included under these provisions as a direct service worker.

Disability—a physical or mental impairment which substantially limits one or more of the major life activities of an individual or who has a history of such impairment or who is regarded as having such impairment; having a condition (such as an illness or an injury) that damages or limits a person's physical or mental abilities, either temporarily or on a permanent basis.

Elderly—any adult over 75 years old or individuals over 65 years old who have functional impairments.

Employed—performance of a job or task for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is directly hired for an on staff position.

Employer—an individual or entity that pays an individual wages or a salary for performing a job.

Exploitation—the illegal or improper use or management of the funds, assets or property of an adult with disabilities or who is elderly, or the use of the power-of-attorney or guardianship of an adult with disabilities or who is elderly for one's own profit or advantage.

Extortion—the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation or abuse of legal or official authority.

Finding—allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department for the following reasons:

1. after a final decision by an administrative law judge or a court of law, after all appeal delays afforded by law are exhausted; or
2. failure by the accused to timely request an appeal in accordance with the provisions of this Rule.

Health Care Provider—any health care facility, agency, or entity licensed and/or certified by DHH. Such entities may be referred to in other laws, statutes and regulations as providers, agencies, clinics, residential care units, homes or facilities. Health care providers include, but are not limited to, the following:

1. nursing facilities;
2. hospice providers;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers;
7. home health agencies;
8. behavioral health providers;
9. dialysis units; or

10. home and community based services providers.

Health Standards Section (HSS)—the section of the Department of Health and Hospitals responsible for the licensing and/or certification of health care providers.

Home and Community-Based Services—those services as defined in R.S. 40:2120.2 or a successor statute. For the purposes of this Rule, home and community-based services do not include services provided in day or residential congregate care settings including, but not limited to, the following:

1. nursing facilities;
2. hospice care facilities;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers; or
7. any other 24-hour facility licensed by the department or the Department of Children and Family Services, exclusive of center-based respite facilities.

Major Life Activities—functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Misappropriation—taking possession without the permission of the individual who owns the personal belongings or the deliberate misplacement, exploitation or wrongful temporary or permanent use of an individual's belongings or money without the individual's consent.

Neglect—the failure, or willful forsaking of an adult by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his/her well-being.

Noncomplex Task—a health-related task with predictable results that can be safely performed according to exact directions with no need to alter the standard procedure.

Person-Specific Training—a set of knowledge, skills, training and abilities that address the client's strengths, restrictions relative to aging, disabilities, health care needs and related factors in order to meet the unique needs of the person receiving care.

Plan of Care—a plan that describes the assistance or services required to be provided to a person receiving home and community-based services, as defined herein. The plan also describes who shall provide the assistance and the frequency and/or duration of the services that shall be provided.

Provider—

1. an entity that furnishes care and services to consumers and has been licensed and/or certified by the department to operate in the state;
2. in the case of an authorized departmental self-directed program, provider shall be the entity or individual

as specified by the program employing or contracting the direct service worker.

Registered Nurse—any individual possessing a valid, active and unencumbered Louisiana license to practice nursing as a registered nurse (RN).

Stable and Predictable—a situation in which the person's clinical and behavioral status is determined by a licensed RN to be non-fluctuating and consistent. A stable and predictable condition involves long term health care needs which are recuperative in nature and do not require the regular scheduled presence of a RN or licensed practical nurse (LPN).

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HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3175 (December 2012), LR 42:893 (June 2016).

§9202. Introduction

A. The Department of Health and Hospitals (DHH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, exploitation or extortion have been substantiated by the department, an administrative law judge, or a court of law.

B. The Direct Service Worker Registry will contain the following items on each individual for whom a finding has been placed:

1. name;
2. address;
3. Social Security number;
4. state registration number;
5. an accurate summary of finding(s); and
6. information relative to registry status which will be available through procedures established by the Health Standards Section (HSS).

C. Licensed and/or certified health care providers shall access the registry to determine if there is a finding that a prospective hire or currently employed or contracted direct service worker has been determined to have committed abuse or neglect of an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired nor shall a current employee have continued employment with the licensed and/or certified health care provider.

D. All provisions of this Chapter, except Subchapter D, §§9241-9261, Medication Administration and Noncomplex Tasks in Home and Community-Based Settings, applies to any licensed and/or certified health care provider who employs or contracts direct service workers who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and

who is involved in face-to-face direct contact with the person.

1. Exception. Home and community-based services providers are required to meet all provisions of this Chapter, inclusive of Subchapter D, §§9241-9261, if the HCBS provider employs or contracts direct service workers who perform medication administration and noncomplex medical tasks in the HCBS setting.

E. The provisions of this Chapter shall apply to direct service workers who are compensated, regardless of the setting, and specifically do not apply to those direct service workers listed on the Certified Nurse Aide Registry established under rules promulgated by the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:894 (June 2016).

Subchapter B. Reserved.

Subchapter C. Provider Participation

§9231. Health Care Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, the licensed and/or certified health care provider shall:

1. assure that the individual is at least 18 years of age, and that they have the ability to read, write and comprehend the English language; and
2. access the registry in accordance with the provisions of §9202.C.

B. The health care provider shall have a written process to check the registry every six months to determine if any currently employed or contracted direct service worker or trainee has been placed on the registry with a finding that he/she has been determined to have committed abuse or neglect of an individual being supported or misappropriated the individual's property or funds.

1. The provider shall follow the agency's process in demonstration of compliance with this procedure.

2. If there is such a finding on the registry, the employee shall not have continued employment with the licensed and/or certified health care provider in accordance with the provisions of §9202.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:894 (June 2016).

Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. A registered nurse shall authorize and monitor medication administration and noncomplex tasks performed by the direct service workers. In order for the RN to authorize these tasks, the direct service worker shall:

1. be employed or contracted by an agency licensed and/or certified by the HSS or employed as part of an authorized departmental self-directed program; and
2. attend to an individual who:
 - a. is receiving home and community-based services;
 - b. is able to self-direct the services or resides in a residence where there is daily monitoring by a family member or other health care provider;
 - c. has an approved current plan of care; and
 - d. receives periodic assessment by a RN based on the person's health status and specified within the plan of care; in no case shall the periodic assessment be less than annually. A comprehensive assessment performed for a client in accordance with policies and procedures established by Medicaid or by a DHH program office may serve as the

basis of the RN assessment but may not be used in lieu of the RN assessment.

B. A registered nurse may delegate to a licensed practical nurse components of the training and supervision of the DSW. The decision is based upon assessment of the individual task to be performed. The RN shall retain the responsibility and accountability for all acts of delegation and ensuring authorization and competency validation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012), amended LR 42:895 (June 2016).

§9245. Training Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. Person-Specific Training. Direct service workers shall receive person-specific training from a RN who has assessed the health status of the person and who has determined that the direct service worker can competently perform the tasks in a safe, appropriate manner for this person.

1. The RN's determination of competency shall be certified by the RN in writing, and the written certification shall be maintained in the direct service worker's personnel file. The RN's determination of competency shall not be delegated.

2. This training shall be repeated if the RN does not certify that the direct service worker has demonstrated a sufficient level of competency in the subject matter.

3. Based on the nursing assessment and clinical judgment, the RN shall provide additional person-specific training when the person receiving care has a change in health status or physician orders and yet remains in a stable, predictable condition. The RN may make a determination based upon his/her assessment of the worker's competency that training can be safely performed via telephone contact with the worker. Examples include, but are not limited to:

- a. changes in physician orders concerning health care tasks to be performed;
- b. changes in physician orders regarding routine medications; or
- c. new physician orders for short-term use of medication for a minor acute health condition.

B. Medication Administration Training. Direct service workers shall attain proficiency in the fundamentals of medication administration. Direct Service Staff shall receive 16 hours of medication administration training which has been coordinated and approved by an RN and which shall include the following.

1. Medication Administration Core Curriculum:
 - a. legal aspects of administering medication;
 - b. roles and responsibilities of medication administration;
 - c. medical terminology;

- d. classification and identification of drugs;
- e. measuring medications;
- f. effects and side effects;
- g. distribution and routes of medication;
- h. drug interactions;
- i. handling and storage of medicines;
- j. six fundamental rights of administering medication:

- i. give the right medication;
- ii. give the right dose;
- iii. give the medication to the right individual;
- iv. give the medication by the right route;
- v. give the medication at the right time; and
- vi. provide the right documentation.

2. Documentation Training. Direct service workers shall attain proficiency in documentation which includes:

- a. the contents of chart or record;
- b. the importance of record keeping;
- c. the rules for charting, including time limits;
- d. documenting vital signs, as applicable;
- e. documenting the condition of the person receiving care and significant changes; and
- f. the name of medication, dose, route and time of administration.

3. Skill Proficiency Training. Direct service workers shall attain proficiency in the following skill areas, either by physical or verbal demonstration to the RN:

- a. universal precautions and infection control;
- b. vital signs, as applicable:
 - i. counting pulse;
 - ii. counting respirations;
 - iii. taking blood pressure; and
 - iv. taking oral, rectal, or axillary temperature.

C. A direct service worker who has not completed didactic training and demonstrated competency in accordance with guidelines established and approved by the Department of Health and Hospitals and the Louisiana Board of Nursing shall not be allowed to perform medication administration or any noncomplex tasks covered by this Rule.

D. Any direct service worker currently employed or contracted to perform the procedures authorized by this Chapter shall complete the training required by this Subchapter no later than 12 months after promulgation of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012), amended LR 42:895 (June 2016).

§9249. Authorized Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

A. Direct service workers who meet the requirements of this Rule, including training and competency assessment, and who are so authorized may perform medication administration and non-complex tasks authorized by this Subchapter. Such a direct service worker may perform the following tasks for a person who is in stable condition only when the tasks may be performed according to exact directions, there is no need to alter the standard procedure, and the results are predictable:

1. administration of oral and topical medication, ointments, suppositories or a pre-measured dosage unit provided by the manufacturer of an oral inhalant aerosol, as ordered by an authorized prescriber;

a. any medication administered by a direct service worker under these provisions shall be in a container which meets acceptable pharmaceutical standards and is marked with:

- i. clear instructions;
- ii. the prescriber's name;
- iii. the prescription number, if any;
- iv. the name of the medication;
- v. the dosage;
- vi. the route;
- vii. the frequency; and
- viii. the time to be administered, if applicable;

2. provision of routine hydration, nutrition or medication by way of an established gastro-tube; and

3. other noncomplex tasks as identified by guidelines established and approved by the Department of Health and Hospitals and the Louisiana Board of Nursing.

PUBLIC HEALTH—GENERAL

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37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of
Health and Hospitals, Bureau of Health Services Financing, LR
38:3178 (December 2012).

Subchapter E. Violations

§9273. Allegations of Direct Service Worker Wrong-Doing

A. The department, through the Division of Administrative Law, or its successor, provides a process for the review, investigation, and appeal of all allegations of wrong-doing by direct service workers. Direct service workers and trainees shall not:

1. use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on an individual being supported; nor
2. neglect an individual or commit exploitation, extortion, or misappropriation of the individual's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:895 (June 2016).

§9275. Notice of Violation

A. When there are substantiated allegations against the direct service worker, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following:

1. the nature of the violation(s) and the date and time of each occurrence;
2. the department's intent to report these violations to the DSW Registry; and
3. the right to request from HSS an informal discussion (informal dispute resolution process); and
4. the right to request from the Division of Administrative Law an administrative hearing (appeal).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), LR 42:895 (June 2016).

Subchapter F. Administrative Hearings

§9285. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the direct service worker may request an administrative hearing.

1. The request for an administrative hearing shall be made in writing to the Division of Administrative Law, or its successor.

2. The request shall contain a statement setting forth the specific allegations which the direct service worker disputes and the reasons for this dispute.

3. Unless a timely and proper request is received by the Division of Administrative Law or its successor, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation will then be sent to the DSW Registry to be recorded.

B. When an administrative hearing is scheduled, the Division of Administrative Law, or its successor, shall notify the direct service worker, his/her representative and the agency representative in writing.

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the Administrative Procedure Act.

D. If there is a final and binding administrative hearing decision to place a finding on the DSW Registry against the direct service worker, the department shall place the direct service worker's name and the adverse findings on the DSW Registry. The occurrence and findings will remain on the DSW Registry permanently.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:896 (June 2016).