

## **NOTICE OF INTENT**

### **Department of Health Bureau of Health Services Financing**

#### **Direct Service Worker Registry (LAC 48:I.Chapter 92)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 92 as authorized by R.S. 36:254 and 40:2179-2179.1. 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 proposes to amend the provisions governing the Direct Service Worker (DSW) Registry in order to 1) provide a process for direct service workers who have been placed on the DSW Registry with a negative finding of neglect of a client to request removal, under certain conditions, and to provide for appeal opportunities if the reinstatement request is denied; and 2) clarify and ensure that the provisions for the DSW Registry are promulgated in a clear and concise manner in the *Louisiana Administrative Code*.

## **Title 48**

### **PUBLIC HEALTH-GENERAL Part I. General Administration Subpart 3. Licensing**

#### **Chapter 92. Direct Service Worker Registry**

#### **Subchapter A. General Provisions**

## §9201. Definitions

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*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 ~~be~~ include supervision and prompting to allow the individual to self-perform such tasks.

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*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 or communication by other electronic means.

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*Department*~~-the Louisiana Department of Health and Hospitals~~ (~~DHHL~~LDH).

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*Direct Service Worker Registry*-the negative database, maintained by the department, or its designee, of unlicensed persons who have a finding placed against them of abuse,

neglect, misappropriation, exploitation, or extortion while employed as a DSW at a licensed health care facility or entity who are ineligible to be employed, or have continued employment, as a direct service worker.

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

1. - 2. ...

*Health Care Provider*—any health care facility, agency, or entity licensed and/or certified by ~~DHHL~~LDH. 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. - 10. ...

*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. - 6. ...

7. any other 24-hour facility licensed by the department, [Department of Education](#) or the Department of Children and Family Services, exclusive of center-based respite facilities.

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[Mental Abuse-Emotional or mental abuse may involve any activity that is designed to blame, shame, humiliate, or intimidate an individual and includes, but is not limited to abuse that is facilitated or caused by taking or using photographs or recordings in any manner that would demean or humiliate a client using any type of equipment \(e.g., cameras, smart phones, and other electronic devices\) and/or keeping or distributing them through multimedia messages or on social media sites.](#)

[1. Mental abuse may occur through either verbal or nonverbal conduct which causes or has the potential to cause the client to experience humiliation, intimidation, fear, shame, agitation, or degradation, regardless of whether the client provided consent and regardless of the client's cognitive status. This may include, but is not limited to:](#)

[a. photographs and recordings of clients that contain nudity;](#)

[b. sexual and intimate relations;](#)

- c. bathing, showering or toileting;
- d. providing perineal care, such as after an incontinence episode;
- e. agitating a client to solicit a response;
- f. derogatory statements directed to the client;
- g. showing a body part of the client without the client's face, whether it is the chest, limbs or back;
- h. labeling a client's pictures and/or providing comments in a demeaning manner;
- i. directing a client to use inappropriate language; and/or
- j. showing a client in a compromised position.

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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, unless the resident exercises his/her right to refuse the necessary care.

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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 32:2058 (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), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§9202. Introduction**

A. The Department of Health ~~and Hospitals~~ (~~DHH~~LDH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, misappropriation, 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. - 3. ...
4. ~~state registration number~~an accurate summary of finding(s); and
5. ~~an accurate summary of finding(s); and~~information relative to registry status which will be available through procedures established by the Health Standards Section (HSS).

6. ~~information relative to registry status which will be available through procedures established by the Health Standards Section (HSS).~~ Repealed.

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~~ DSW, has been determined to have committed exploitation, extortion, 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 as a DSW nor shall a current employee have continued employment as a DSW with the licensed and/or certified health care provider.

1. Access to the registry shall be limited to an inquiry for a specific DSW.

D. - D.1. ...

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

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), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**Subchapter B. Reserved.**

**Subchapter C. Provider Participation**

**§9231. Health Care Provider Responsibilities**

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

1. ~~assure~~ensure 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.~~document that the individual is able to read, write and comprehend the English language; and

3. access the registry in accordance with the provisions of §9202.C-C.1.

B. The health care provider shall have a written policy/process to check the DSW registry on the department's



designated database at least every six months to determine if any currently employed or contracted ~~direct service worker~~DSW 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 or committed exploitation or extortion of an individual being supported.

1. ...

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

NOTE: The DSW Registry is maintained on the department's designated database which may also contain other exclusionary information on a DSW. The provider's responsibility to access the database shall also be conducted in accordance with other departmental rules and regulations, as applicable.

D. Criminal History. In accordance with RS 40:1203.1-5 et seq., the provider shall have a written policy and process to request in writing a security check and the criminal history of an employee, either contracted or directly employed, conducted by the Louisiana State Police or authorized agency, upon offer of employment or contract.

1. An employer may make an offer of temporary employment to a non-licensed person pending the results of the criminal history and security check on the person. In such instances, the employer shall provide to the Louisiana State Police, or authorized agency, the name and relevant information relating to the person within 72 hours after the date the person accepts temporary employment.

2. The security check shall consist of the use of personal identifiers, such as name, social security number, date of birth, and driver's license number, to search the national sex offender public registry. The provider shall obtain from the Louisiana State Police or the authorized agency the results of the security check to verify if an applicant is listed in the national sex offender public registry.

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), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**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. ...

2. attend to an individual who:

a. - c. ...

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~~-LDH program office may serve as the basis of the RN assessment but may not be used in lieu of the RN assessment.

B. ...

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), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

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

A. - A.2. ...

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, other means of electronic communication, or face-to-face contact with the worker. Examples include, but are not limited to:

A.3.a. - B.3.b.iv. ...

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. ...

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), amended by the  
Department of Health, Bureau of Health Services Financing, LR  
45:

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

A. - A.2. ...

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

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 38:3178  
(December 2012), amended by the Department of Health, Bureau of  
Health Services Financing, LR 45:

**Subchapter E. Violations**

**§9273. ~~Allegations of~~ Prohibited Direct Service Worker ~~Wrong-~~  
~~Doing~~ Conduct**

A. The department, ~~through the Division of Administrative~~  
~~Law, or its successor,~~ provides a process for the review, ~~and~~ and

investigation, ~~and appeal~~ of all allegations of wrong-doing by ~~direct service workers~~ DSWs. ~~Direct service workers and trainees shall not~~ The following constitutes prohibited DSW conduct:

1. ~~use~~ verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on an individual being supported; ~~nor~~
2. neglect of an individual ~~or commit exploitation, extortion, or misappropriation of the individual's property or funds.~~ being supported; or
3. exploitation, extortion, or misappropriation of the individual's person, property or funds, inclusive of, but not limited to, the following:
  - a. credit card fraud;
  - b. theft of a firearm;
  - c. identity theft;
  - d. fraudulent acquisition of a credit card; or
  - e. theft of a vehicle.

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), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§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. - 2. ...

3. ~~the right to request from HSS an informal discussion (informal dispute resolution process); and~~ appeal rights/opportunities:

a. the right to request from HSS an informal discussion (informal dispute resolution process); and

b. the right to request from the Division of Administrative Law an administrative hearing (appeal); or

c. the right to bypass the informal dispute resolution process and request appeal with the Division of Administrative Law.

4. ~~the right to request from the Division of Administrative Law an administrative hearing (appeal).~~ Repealed.

B. The specified timeframe, up to and including permanent status, to cease employment as a DSW in a licensed health care

facility will be indicated in the notice letter of placement of the finding against the DSW.

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), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

## **Subchapter F. Administrative Hearings**

### **§9285. General Provisions**

A. - A.3. ...

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

B. - C. ...

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~~ finding(s) ~~will~~ may remain on the DSW Registry against the DSW for a specified length of time up to and including permanently dependent on the severity and nature of the offense.



1. The specified timeframe, up to and including permanent status, to cease employment as a DSW in a licensed health care facility will be stated in the notice letter of placement of the finding against the DSW.

E. Removal of the DSW's name from the DSW Registry.

1. For those DSWs who only have a placement of finding of neglect, HSS will consider removal of the DSW's name from the Registry only upon the DSW's written request to the department for reinstatement and in accordance with the following:

a. the employment and personal history of the DSW does not reflect a pattern of abusive behavior or neglect or instances of misappropriation, exploitation or extortion of an individual being supported;

b. the neglect involved in the original finding was a singular occurrence; and

c. a period of no less than one year has passed since the DSW's name was placed on the Registry barring employment in a licensed health care facility as a DSW.

3. If the DSW successfully petitions the department to remove the DSW's name from the Registry, the DSW will be notified in writing of such determination and date of removal.

4. If the DSW unsuccessfully petitions the department to remove the DSW's name from the Registry, the DSW

will be notified in writing of the department's decision and their right to an administrative appeal in accordance with §9275.A(3)a-c.

5. There shall be only one opportunity for a DSW to request removal of their name from the DSW Registry.

6. There is no opportunity afforded for a DSW to request removal of a finding of abuse, extortion, misappropriation or exploitation placed against them on the Registry.

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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 45:

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.

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.

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 Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to [MedicaidPolicy@la.gov](mailto:MedicaidPolicy@la.gov). Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on April 1, 2019.

The department will conduct a public hearing at 9:30 a.m. on March 28, 2019 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All

interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. 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.

Rebekah E. Gee MD, MPH

Secretary