

## **NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing  
and  
Office of Aging and Adult Services**

**Personal Care Services  
Long Term Care  
(LAC 50:XV.12901 and 12903)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.12901 and 12903 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 of Aging and Adult Services propose to amend the provisions governing long term-personal care services (LT-PCS) in order to update and remove obsolete terminology to reflect the current assessment tool used to determine LT-PCS eligibility, and to ensure that consistent language is used throughout the administrative Rule.

### **Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE  
Part XV. Services for Special Populations  
Subpart 9. Personal Care Services**

**Chapter 129. Long Term Care**

## **§12901. General Provisions**

A. The purpose of long term-personal care services (LT-PCS) is to assist individuals with functional impairments with their daily living activities. ~~Personal care services~~LT-PCS must be provided in accordance with an approved service plan and supporting documentation. In addition, ~~personal care services~~LT-PCS must be coordinated with the other Medicaid and non-Medicaid services being provided to the ~~recipient~~participant and will be considered in conjunction with those other services.

B. Each ~~recipient~~individual requesting or receiving ~~long-term~~long term-personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the level of care eligibility tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/~~recipient~~participant shall be assessed using a uniform interRAI home care assessment tool or a subsequent assessment tool designated by OAAS. The assessment is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying ~~his/her~~an individual's need for support in performance of activities of daily living (ADLs)~~-and instrumental activities of daily living (IADLs)~~. The assessment generates a score which measures the ~~recipient's~~individual's

degree of self-performance of ~~late-loss~~the following activities of daily living ~~during the period just before the assessment.~~:

1. ~~The late-loss ADLs include eating, toileting, transferring and~~ bed mobility. ~~An individual's assessment will generate a score which is representative of the individual's degree of self performance on the late loss ADLs.~~;

2. toilet transfer;

3. toilet use; and

4. eating.

D. Based on the ~~applicant/recipient's uniform assessment~~ individual's ADL Index score, ~~he/she is~~they are assigned ~~to a level of support category and is~~are eligible for a set allocation of weekly service hours associated with that ~~level~~score.

1. If the ~~applicant/recipient~~individual is allocated less than 32 hours per week and believes that ~~he/she is~~they are entitled to more hours, the ~~applicant/recipient~~individual or ~~his/her~~their responsible representative may request a fair hearing to appeal the decision.

2. The ~~applicant/recipient~~individual may qualify for more hours if it can be demonstrated that:

a. one or more answers to the questions involving ~~late-loss~~the ADLs used in the ADL Index score are incorrect as recorded on the assessment; or

b. ~~he/she needs~~they need additional hours to avoid entering into a nursing facility.

E. Requests for ~~personal care services~~LT-PCS shall be accepted from the following individuals:

1. a Medicaid ~~recipient~~participant who wants to receive ~~personal care services~~LT-PCS;

2. an individual who is legally responsible for a ~~recipient~~participant who may be in need of ~~personal care services~~LT-PCS; or

3. a responsible representative designated by the ~~recipient~~participant to act on his/her behalf in requesting ~~personal care services~~LT-PCS.

F. Each ~~recipient~~individual who requests LT-PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the ~~recipient~~individual to act on his/her behalf in the process of accessing and/or maintaining ~~personal care services~~LT-PCS.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the ~~recipient's~~participant's business without his/her involvement.

b. The written designation is valid until revoked by the ~~recipient~~participant. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist or represent, as needed, the ~~recipient~~participant in the assessment, care plan development and service delivery processes; and

b. to aid the ~~recipient~~participant in obtaining all necessary documentation for these processes.

3. No individual may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based ~~service~~programsservices. This includes but is not limited to:

a. ...

b. ~~long-term~~long term-personal care services;

c. - d. ...

G. The Department of Health may remove an LT-PCS provider from the LT-PCS provider freedom of choice list and offer freedom of choice to LT-PCS participants when:

1. one or more of the following departmental proceedings are pending against ~~a~~an LT-PCS participant's service provider:

1.a. - 3. ...

H. The department may offer ~~recipients~~participants the freedom to choose another provider if/when the owner(s), operator(s), or member(s) of the governing body of the provider agency is/are under investigation related to:

1. - 8. ...

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 Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 39:2506 (September 2013), LR 41:540 (March 2015), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1980 (October 2017), LR 49:

#### **§12903. Covered Services**

A. ~~Personal care services~~LT-PCS are defined as those services that provide assistance with the distinct tasks

associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by

~~him/herself~~themselves.

1. ~~eating~~ADLs are those personal, functional activities required by the participant. ADLs include tasks such as:

- a. eating;
- b. bathing;
- c. dressing;
- d. grooming/personal hygiene;
- e. transferring;
- f. ambulation;
- g. toileting; and
- h. bed mobility.

2. ~~bathing~~IADLs are those activities that are considered essential but may not require performance on a daily basis. IADLs include tasks such as:

- a. light housekeeping;
- b. food preparation and storage;
- c. shopping;
- d. laundry;

e. assistance with scheduling medical appointments when necessary;

f. accompanying to medical appointments when necessary;

g. assistance with accessing transportation;

h. medication reminders; and

i. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

3. ~~dress~~ing; Emergency and non-emergency medical transportation is a covered Medicaid service and is available to all participants. Non-medical transportation is not a required component of LT-PCS. However, providers may choose to furnish transportation for participants during the course of providing LT-PCS. If transportation is furnished, the provider agency must accept any liability for their employee transporting a participant. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

4. ~~grooming~~; Constant or intermittent supervision and/or sitter services are not a component of LT-PCS.

5. ~~transferring the manner in which an individual moves from one surface to another (excludes getting on and~~



~~off the toilet, and getting in and out of the tub/shower);~~ For participants receiving LT-PCS with the Adult Day Health Care (ADHC) Waiver, LT-PCS may be provided by one worker for up to three LT-PCS participants who live together, and who have a common direct service provider.

~~6. ambulation;~~

~~7. toileting; and~~

~~8. bed mobility.~~

~~B. IADLs are those activities that are considered essential but may not require performance on a daily basis.~~

~~IADLs include tasks such as:~~

~~1. light housekeeping;~~

~~2. food preparation and storage;~~

~~3. shopping;~~

~~4. laundry;~~

~~5. assisting with scheduling medical appointments when necessary;~~

~~6. accompanying the recipient to medical appointments when necessary;~~

~~7. assisting the recipient to access transportation;~~  
~~and~~

~~8. reminding the recipient to take his/her medication as prescribed by the physician; and~~

~~9. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.~~

~~C. Emergency and nonemergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.~~

~~D. Constant or intermittent supervision and/or sitter services are not a component of personal care services.~~

~~E. For participants receiving LT PCS with the Adult Day Health Care (ADHC) Waiver, personal care services may be provided by one worker for up to three long-term personal care service recipients who live together, and who have a common direct service provider~~[A.6. - E. 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 Health

Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 42:1931 (November 2016), LR 47:593 (May 2021), LR 49:

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 the Small Business Protection Act, 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.

#### **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, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The

deadline for submitting written comments is at 4:30 p.m. on April 3, 2023.

### **Public Hearing**

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 March 13, 2023. If criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 2023 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 March 13, 2023. 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