

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
Office of Aging and Adult Services and
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
Standards for Participation
(LAC 50:XXI.101,301 and Chapter 9)**

The Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.101, §301 and to adopt Chapter 9 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, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, through collaborative efforts, provide enhanced home and community-based services (HCBS) and supports to individuals participating in Section 1915(c) Medicaid waivers.

The department now proposes to amend the general provisions governing HCBS waivers in order to: 1) adopt removal criteria for the freedom of choice list; 2) revise the provisions governing termination of coverage for displaced residents; 3) adopt criteria related to the settings in which all home and

community-based services are delivered; 4) adopt criteria for use of an electronic visit verification (EVV) system for home and community-based services; and 5) adopt incident reporting requirements.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 1. General Provisions

Chapter 1. Freedom of Choice

§101. General Provisions

A. The Department of Health may remove a service provider from the waiver provider freedom of choice list and offer freedom of choice to waiver participants when:

A.1. - A.3. ...

B. The department may offer recipients 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. bribery or extortion;
2. tax evasion or tax fraud;
3. money laundering;
4. securities or exchange fraud;
5. wire or mail fraud;
6. violence against a person;
7. act(s) against the aged, children or infirmed; or
8. any crime involving public funds

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:1098 (June 2014), amended by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:

Chapter 3. Eligibility

§301. Termination of Coverage for Displaced Recipients

A. When a declared disaster occurs and recipients relocate out of state due to the declared disaster, Medicaid coverage of the services they are receiving in home and community-based waivers, shall be terminated under either of the following circumstances:

1. the participant fails to return to Louisiana within 90 days following the initial identified date of the declared disaster; or

EXCEPTION: The department may extend this timeframe due to extenuating circumstances.

2. the participant relocates with no intention of returning to Louisiana.

B. - E.1. 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 29:1829 (September 2003), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services, LR 34:1627 (August 2008), amended by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:

§305. Continued Eligibility

A. Home and community-based providers shall report to the operating agency when/if it becomes known to the agency that a participant's status has changed such that the participant no longer meets programmatic or financial eligibility requirements.

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, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:

Chapter 9. Provider Requirements

Subchapter A. General Provisions

§901. Settings Requirements for Service Delivery

A. All home and community-based services (HCBS) delivered through a 1915(c) waiver must be provided in settings with the following qualities:

1. the setting is integrated in and supports full access of waiver participants to the greater community, including opportunities to:

a. seek employment and work in competitive integrated settings;

b. control personal resources;

c. engage in community life; and

d. receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services;

2. the setting is selected by the participant from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the participant's needs, preferences, and, for residential settings, resources available for room and board;

3. the setting ensures a participant's rights of privacy, dignity and respect, and freedom from coercion and restraint;

4. the setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life

choices, including but not limited to, daily activities, physical environment, and with whom to interact; and

5. the setting facilitates individual choice regarding services and supports, and who provides them.

B. In a provider-owned or controlled non-residential setting, in addition to the qualities listed above, the following additional conditions must be met:

1. participants shall have the freedom and support to control their own schedules and activities, and have access to food at any time to the same extent as participants not receiving Medicaid home and community-based waiver services;

2. participants shall be able to have visitors of their choosing at any time to the same extent as participants not receiving Medicaid home and community-based waiver services; and

3. the setting shall be physically accessible to the participant.

C. In a provider-owned or controlled residential setting, in addition to the qualities above, the following additional conditions must be met:

1. The unit or dwelling shall be a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the

landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

2. Each participant shall have privacy in their sleeping or living unit.

a. Units shall have entrance doors lockable by the participant, with only appropriate staff having keys to doors.

b. Participants sharing units shall have a choice of roommates in that setting.

c. Participants shall have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

D. Providers shall work with the department to timely address and remediate any identified instances of non-compliance.

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, the Office of Aging

and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:

§903. Electronic Visit Verification

A. An electronic visit verification (EVV) system must be used for automated scheduling, time and attendance tracking and billing for home and community-based services.

1. Home and community-based waiver providers identified by the department shall use:

a. the EVV system designated by the department,
or

b. an alternate system that:
i. has successfully passed the data integration process to connect to the designated EVV system, and
ii. is approved by the department.

2. Reimbursement for services may be withheld or denied if a provider:

a. fails to use the EVV system, or
b. uses a system not in compliance with Medicaid's policies and procedures for EVV.

3. Requirements for proper use of the EVV system are outlined in the respective program's Medicaid provider manual. All providers of home and community-based waivers shall comply with the respective program's Medicaid provider manual.

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, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:

§905. Critical Incident Reporting.

A. Support coordination and direct service provider types are responsible for documenting the occurrence of incidents or accidents that affect the health and welfare of the participant, and for completing an incident report.

B. The incident report shall be submitted to the department, or its designee, with the specified requirements and within specified time lines.

C. Specific requirements and timelines are outlined in each program office's *Critical Incident Reporting Policy and Procedures* document.

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, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:

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.

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by assuring that HCBS waiver participants receive the services they are in need of in an efficient and cost-effective manner.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by allowing working family members to maintain stable employment due to the improved delivery of HCBS waiver services which may reduce the financial burden on families.

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 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 proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, August 24, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person

Preparing

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Office: Bureau of Health Services
Financing

Return P.O. Box 91030

Address: Baton Rouge, LA

Rule Title: Home and Community-Based
Services Waivers
Standards for Participation

Date Rule Takes Effect: October 20, 2017

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic savings of approximately \$1,040,722 for FY 17-18, \$1,022,334 for FY 18-19 and \$1,053,004 for FY 19-20. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on an enhanced Federal Medical Assistance Percentage (FMAP) rate of 75 percent approved through the Medicaid Management Information Systems Modernization Project for electronic visit verification.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$3,123,356 for FY 17-18, \$3,067,001 for FY 18-19 and \$3,159,011 for FY 19-20. It is anticipated that \$594 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on an enhanced Federal Medical Assistance Percentage (FMAP) rate of 75 percent approved through the Medicaid Management Information Systems Modernization Project for electronic visit verification.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the general provisions governing Home and Community-Based Services (HCBS) Waivers in order to: 1) adopt removal criteria for the freedom of choice list; 2) revise the provisions governing termination of coverage for displaced residents; 3) adopt criteria related to the settings in which all home and community-based services are delivered; 4) adopt criteria for use of an electronic visit verification (EVV) system for home and community-based services; and 5) adopt incident reporting requirements. It is anticipated that implementation of this proposed rule will result in an economic cost to providers to obtain the equipment utilized for EVV, but is projected to reduce programmatic expenditures for HCBS waiver services by approximately \$4,165,266 for FY 17-18, \$4,089,335 for FY 18-19 and \$4,212,015 for FY 19-20 due to increased prevention of fraud resulting from inappropriate billing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.



Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee

Evan Brassfield, Staff Director

Legislative Fiscal Officer
or Designee

7/10/17

Date of Signature

Date of Signature

Bhaskar Ind.

LDH/BHSF Budget Head

07/10/17

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the general provisions governing home and community-based services (HCBS) waivers in order to: 1) adopt removal criteria for the freedom of choice list; 2) revise the provisions governing termination of coverage for displaced residents; 3) adopt criteria related to the settings in which all home and community-based services are delivered; 4) adopt criteria for use of an electronic visit verification (EVV) system for home and community-based services; and 5) adopt incident reporting requirements.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, through collaborative efforts, provide enhanced home and community-based services (HCBS) and supports to individuals participating in Section 1915(c) Medicaid waivers.

The department now proposes to amend the general provisions governing HCBS waivers in order to: 1) adopt removal criteria for the freedom of choice list; 2) revise the provisions governing termination of coverage for displaced residents; 3) adopt criteria related to the settings in which all home and community-based services are delivered; 4) adopt criteria for use of an electronic visit verification (EVV) system for home and community-based services; and 5) adopt incident reporting requirements

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, this proposed rule will result in a reduction in programmatic expenditures by approximately \$4,164,078 for FY 17-18, \$4,089,335 for FY 18-19 and \$4,212,015 for FY 19-20. In FY 17-18, \$432 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) If yes, attach documentation.
(b) If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 17-18	FY 18-19	FY 19-20
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,188	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	(\$4,165,266)	(\$4,089,335)	(\$4,212,015)
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	(\$4,164,078)	(\$4,089,335)	(\$4,212,015)

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The expenses reflected above are the estimated decreases in programmatic expenditures in the Medicaid program. In FY 17-18, \$1,188 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	(\$1,040,722)	(\$1,022,334)	(\$1,053,004)
SELF-GENERATED			
FEDERAL FUND	(\$3,123,356)	(\$3,067,001)	(\$3,159,011)
OTHER (Specify)			
Total	(\$4,164,078)	(\$4,089,335)	(\$4,212,015)

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	(\$3,123,356)	(\$3,067,001)	(\$3,159,011)
LOCAL FUNDS			
Total	(\$3,123,356)	(\$3,067,001)	(\$3,159,011)

*Specify the particular fund being impacted

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

The amounts reflected above are the estimated decreases in the federal share of programmatic expenditures for the Medicaid Program. In FY 17-18, \$594 is included for the federal expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule amends the general provisions governing home and community-based services (HCBS) waivers in order to: 1) adopt removal criteria for the freedom of choice list; 2) revise the provisions governing termination of coverage for displaced residents; 3) adopt criteria related to the settings in which all home and community-based services are delivered; 4) adopt criteria for use of an electronic visit verification (EVV) system for home and community-based services; and 5) adopt incident reporting requirements.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule will result in an economic cost to providers to obtain the equipment utilized for EVV, but is projected to reduce programmatic expenditures for HCBS waiver services by approximately \$4,165,266 for FY 17-18, \$4,089,335 for FY 18-19 and \$4,212,015 for FY 19-20 due to increased prevention of fraud resulting from inappropriate billing.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.