

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 ~~and Hospitals~~ 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. ~~Effective July 1, 2006, waiver recipients who have been displaced by declared disasters, such as Hurricanes Katrina or Rita, and are currently residing in other states will no longer be able to receive waiver~~ 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 the Louisiana Medicaid Program. 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. This termination of coverage is applicable to recipients receiving services in home and community based waivers.~~

~~C. If the individual returns to live in Louisiana within two years of the date of the declared disaster, he/she must contact the Department to report his/her address and to request that waiver services be restarted.~~

~~D. The individual's name will be placed on a preferred registry with other disaster evacuees who have returned to live in Louisiana and requested that their waiver services be restarted.~~

~~E. Waiver opportunities shall be offered to individuals on the preferred registry on a first come, first serve basis.~~

~~1. The first available waiver opportunity shall be offered to an individual on this registry based on the date that the request to restart services was received.~~ 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