

NOTICE OF INTENT

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

**Personal Care Services - Long-Term
Standards for Participation
(LAC 50:XV.12901 and 12909)**

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:XV.12901 and §12909 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 promulgated an Emergency Rule which adopted provisions governing long-term personal care services (LT-PCS) which mandated that LT-PCS providers must utilize the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking and billing for long-term personal care services (*Louisiana Register*, Volume 41, Number 3). The department subsequently promulgated a Notice of Intent which proposed to continue the provisions of the April 1, 2015 Emergency Rule (*Louisiana Register*, Volume 42, Number 12). As a

result of comments received, the department determined it was necessary to abandon the Notice of Intent published in the December 20, 2016 edition of the *Louisiana Register*.

The department now proposes to promulgate a revised Notice of Intent in order to adopt provisions which mandate utilization of an EVV system for LT-PCS, and to amend the provisions governing freedom of choice for LT-PCS participants.

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. - B. ...

C. Each LT-PCS applicant/recipient 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 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 degree of self-performance of late-loss 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.

D. - F.3.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. - 3. ...

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

§12909. Standards for Participation

A. In order to participate as a personal care services provider in the Medicaid Program, an agency:

1. - 1.d. ...

2. must possess a current, valid home and community-based services license to provide personal care attendant services issued by the Department of Health, Health Standards Section.

B. - D.2. ...

E. Electronic Visit Verification. An electronic visit verification (EVV) system must be used for automated scheduling, time and attendance tracking and billing for LT-PCS services.

1. LT-PCS 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 the 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 LT-PCS providers 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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), LR 39:2508

(September 2013), 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:

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 Medicaid recipients receive needed long-term personal care services 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 personal care 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

Statement: Robert Andrepont

Phone: 342-8769

Dept.: Health

Office: Bureau of Health Services
Financing

Return P.O. Box 91030

Address: Baton Rouge, LA

Rule Title: Personal Care Services -

Long-Term

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 \$234,233 for FY 17-18, \$168,639 for FY 18-19 and \$173,699 FY 19-20. It is anticipated that \$756 (\$378 SGF and \$378 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 \$703,455 for FY 17-18, \$505,918 for FY 18-19 and \$521,095 for FY 19-20. It is anticipated that \$378 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 adopts provisions which mandate utilization of an electronic visit verification (EVV) system for long-term personal care services (LT-PCS), and amends the provisions governing freedom of choice for LT-PCS participants. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures for LT-PCS by approximately \$938,444 for FY 17-18, \$674,557 for FY 18-19 and \$694,794 for FY 19-20.

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

Evan Brassfield, Staff Director

Legislative Fiscal Officer
or Designee

Jen Steele, Medicaid Director
Typed name and Title of
Agency Head or Designee

7/10/17

Date of Signature



LDH/BHSF Budget Head

07/10/17

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 adopts provisions which mandate utilization of an electronic visit verification (EVV) system for long-term personal care services (LT-PCS), and amends the provisions governing freedom of choice for LT-PCS participants.

- 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 and the Office of Aging and Adult Services promulgated an Emergency Rule which adopted provisions governing long-term personal care services (LT-PCS) which mandated that LT-PCS providers must utilize the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking and billing for long-term personal care services (Louisiana Register, Volume 41, Number 3). The department subsequently promulgated a Notice of Intent which proposed to continue the provisions of the April 1, 2015 Emergency Rule (Louisiana Register, Volume 42, Number 12). As a result of comments received, the department determined it was necessary to abandon the Notice of Intent published in the December 20, 2016 edition of the Louisiana Register.

The department now proposes to promulgate a revised Notice of Intent in order to adopt provisions which mandate utilization of an EVV system for LT-PCS, and to amend the provisions governing freedom of choice for LT-PCS participants.

- 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 \$937,688 for FY 17-18, \$674,557 for FY 18-19 and \$694,794 for FY 19-20. In FY 17-18, \$378 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 | \$756 | \$0 | \$0 |
| PROFESSIONAL SERVICES | | | |
| OTHER CHARGES | (\$938,444) | (\$674,557) | (\$694,794) |
| REPAIR & CONSTR. | | | |
| POSITIONS (#) | | | |
| TOTAL | (\$937,688) | (\$674,557) | (\$694,794) |

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, \$756 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 | (\$234,233) | (\$168,639) | (\$173,699) |
| SELF-GENERATED | | | |
| FEDERAL FUND | (\$703,455) | (\$505,918) | (\$521,095) |
| OTHER (Specify) | | | |
| Total | (\$937,688) | (\$674,557) | (\$694,794) |

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 | (\$703,455) | (\$505,918) | (\$521,095) |
| LOCAL FUNDS | | | |
| Total | (\$703,455) | (\$505,918) | (\$521,095) |

***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, \$378 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 adopts provisions which mandate utilization of an electronic visit verification (EVV) system for long-term personal care services (LT-PCS), and amends the provisions governing freedom of choice for LT-PCS participants.

- 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 reduce programmatic expenditures for LT-PCS services by approximately \$938,444 for FY 17-18, \$674,557 for FY 18-19 and \$694,794 for FY 19-20.

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.