

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 ~~called the minimum data set home care (MDS-HC)~~ or a subsequent assessment tool designated by OAAS. The ~~MDS-HC~~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 ~~MDS-HC~~ 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 ~~are~~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 ~~these four~~the late-loss ADLs.

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

G. The Department of Health~~and Hospitals~~ may remove an LT-PCS ~~service~~ 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~~and Hospitals~~, 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