

NOTICE OF INTENT

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

**Personal Assistant Services
Employment Support
(LAC 50:XV.Subpart 11)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to repeal LAC 50:XV.Subpart 11 in the Medical Assistance Program in its entirety 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 repeal the provisions of LAC 50:XV.Subpart 11 governing personal assistant services in its entirety since employment support was never implemented.

**Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 11. Personal Assistant Services**

Chapter 141. Employment Support

§14101. General Provisions

~~A. The purpose of personal assistant services is to enable an individual to obtain, regain and/or maintain~~

~~employment. The mission of Medicaid-funded personal assistant services is to enhance the individual's independence and thereby reduce their dependency on cash assistance. The intent of this service program is to supplement the family and/or community supports that are available to assist the recipient in securing or maintaining employment in the community. This service program is not intended to be a substitute for available family and/or community supports. Personal assistant services must be prescribed by a physician or psychiatrist and provided in accordance with an approved service plan and supporting documentation. In addition, personal assistant services must be coordinated with the other Medicaid services being provided to the recipient and will be considered in conjunction with those other services. Personal assistant services will be provided in a manner consistent with the basic principles of consumer direction as set forth in §14107.~~

~~—— B. — The responsibility of employers to provide assistance to disabled employees under the Americans with Disabilities Act includes job-related functions, and are not primarily for the personal benefit of the individual with a disability. Personal assistant services provided under this Chapter will not supplant the employer's responsibilities.~~

~~—— C. — An assessment shall be performed for every recipient who requests personal assistant services. This assessment shall~~

~~be utilized to identify the recipient's needs and preferences as related to obtaining and maintaining employment, the availability of family and community supports and to develop the service plan. The Minimum Data Set Home Care (MDS HC) System will be used as the basic assessment tool. However, other assessment tools may be utilized as a supplement to the MDS HC to address the needs of special groups within the target population.~~

~~—— D. Prior Authorization. Personal assistant services must be prior authorized. Requests for prior authorization must be submitted to the Bureau of Health Services Financing or its designee and include a copy of the assessment form and the service plan. Any other pertinent documents that substantiates the recipient's request for services may also be submitted. These documents will be reviewed to determine whether the recipient meets the criteria for personal assistant services and the necessity for the number of service hours requested~~[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 29:1487 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14103. Covered Services

~~A. Personal assistant services are defined as those services that provide assistance with the activities of daily living (ADL) and the instrumental activities of daily living (IADL) that are necessary for the purposes of obtaining and/or maintaining employment. Assistance may be either the actual performance of the personal assistant task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by an individual for continued well being, health and safety. ADLs include tasks such as:~~

- ~~_____ 1. eating;~~
- ~~_____ 2. bathing;~~
- ~~_____ 3. dressing;~~
- ~~_____ 4. grooming;~~
- ~~_____ 5. transferring (getting in/out of the tub, from a bed to a chair);~~
- ~~_____ 6. reminding the recipient to take medication;~~
- ~~_____ 7. ambulation; and~~
- ~~_____ 8. toileting.~~

~~B. IADLs are those activities that are considered essential for sustaining the individual's health and safety, but may not require performance on a daily basis. IADLs include tasks such as:~~

- ~~1. light housekeeping;~~
- ~~2. food preparation and storage;~~
- ~~3. grocery shopping;~~
- ~~4. laundry;~~
- ~~5. providing transportation when necessary:~~
 - ~~a. to seek employment;~~
 - ~~b. to go to and from the recipient's place of employment; or~~
 - ~~c. to access other necessary activities; and~~
- ~~6. providing assistance in the completion of employment related or other necessary correspondence~~[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 29:1487 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14105. Recipient Qualifications

~~A. Personal assistant services to support employment shall be available to recipients with disabilities who are age 18 through 64 years old. Disabled is defined as meeting the eligibility criteria established by the Social Security Administration for disability benefits. The recipient must~~

~~require assistance with at least two activities of daily living and be able to participate in his/her care and self direct the services provided by the personal assistant independently or through a responsible representative. Responsible representative is defined as the person designated by the recipient to act on his/her behalf in the process of accessing personal care assistant services~~[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 29:1488 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14107. Recipient Rights

~~A. Recipients who receive services under Employment Support Personal Assistant Services Program have the right to actively participate in the development of their service plan and the decision-making process regarding service delivery. Recipients also have the right to freedom of choice in the selection of a provider of personal assistant services and to participate in the following activities:~~

~~1. interviewing and selecting the personal assistant who will be providing services;~~

~~_____2._____ developing the work schedule for their personal assistant;~~

~~_____3._____ training the individual personal assistant in the specific skills necessary to maintain the recipient's independent functioning while safely maintaining him/her in various settings;~~

~~_____4._____ developing an emergency component in the service plan that includes a list of personal assistant staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled personal assistant from providing services;~~

~~_____5._____ signing off on payroll logs and other documentation to verify staff work hours and to authorize payment;~~

~~_____6._____ evaluating the personal assistant's job performance; and~~

~~_____7._____ transferring or discharging the personal assistant assigned to provide their services;~~

~~_____8._____ an informal resolution process to address their complaints and/or concerns regarding personal assistant services; and~~

~~_____9._____ a formal resolution process to address those situations where the informal resolution process fails to resolve their complaint~~[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 29:1488 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14109. Standards for Participation

~~A. In order to participate as a Personal Assistant Services provider in the Medicaid Program, an agency:~~

~~1. must comply with:~~

~~a. state licensing regulations;~~

~~b. Medicaid provider enrollment requirements;~~

~~c. the standards of care set forth by the Louisiana Board of Nursing; and~~

~~d. the policy and procedures contained in the Personal Assistant Services provider manual;~~

~~2. must possess a current, valid license for the Client Services Providers, Personal Care Attendant Services Module issued by the Department of Social Services, Bureau of Licensing.~~

~~B. In addition, a Medicaid enrolled agency must:~~

~~1. either demonstrate experience in successfully providing direct care services to the target population or~~

~~demonstrate the ability to successfully provide direct care services to the target population;~~

~~2. employ a sufficient number of personal assistant and supervisory staff to ensure adequate coverage in the event that a assistant's illness or an emergency prevents him/her from reporting for work;~~

~~3. ensure that a criminal background check and drug testing is conducted for all direct care staff prior to an offer of employment being made;~~

~~4. ensure that the direct care staff is qualified to provide personal assistant services. Assure that all new staff satisfactorily completes an orientation and training program in the first 30 days of employment;~~

~~NOTE: A legally responsible relative is prohibited from being the paid personal assistant for a family member. Legally responsible relative is defined as a recipient's spouse or a parent of a minor child.~~

~~5. ensure that an employee has a current, valid driver's license and automobile liability insurance if transportation is furnished. The provider agency must accept the liability for their employee transporting a recipient;~~

~~6. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of~~

~~Labor regulations. The subcontracting of individual personal care staff and/or supervisors is prohibited;~~

~~7. implement and maintain an internal quality assurance plan to monitor recipient satisfaction with services on an ongoing basis;~~

~~8. document and maintain recipient records in accordance with federal and state regulations governing confidentiality and licensing requirements;~~

~~9. have written policies and procedures that recognize and reflect the recipient's right to participate in the activities set forth in §14107;~~

~~10. have a written policy for an informal resolution process to address recipient complaints and/or concerns regarding personal assistant services; and~~

~~11. have a written policy for a formal resolution process to address those situations where the informal resolution process fails to resolve the recipient's complaint~~[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 29:1488 (August 2003), repealed by the

Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14113. Place of Service

~~A. Personal assistant services may be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in activities to obtain or maintain employment. The recipient's home is defined as the recipient's place of residence including his/her own house or apartment, a boarding house, or the house or apartment of a family member or unpaid primary care giver. A hospital, an institution for mental disease, a nursing facility, or an intermediate care facility for the mentally retarded, are not considered to be the recipient's home.~~

~~B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state. However, consideration will be given when the recipient lives in an area adjacent to the state's border and it is customary for residents of that area to seek medical and other services in the neighboring state or when the recipient is required to travel out of state for employment related business.~~

~~C. Personal assistant services shall not be provided in the personal assistant's home. However, consideration will be given if it can be satisfactorily assured that:~~

~~1. the selection of the place of service is consistent with the recipient's choice;~~

~~2. the recipient's health and safety can be maintained when services are provided in the personal assistant's home; and~~

~~3. the services do not substitute for otherwise available family and/or community supports.~~

~~D. Place(s) of service must be documented in the service plan and progress notes~~[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 29:1489 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14115. Service Limitations

~~A. Personal assistant services shall be limited to up to 56 hours per week. Authorization of service hours shall be considered on a case by case basis as substantiated by the recipient's service plan and supporting documentation. An extension of the weekly service limit may be requested and will be considered on the basis of medical necessity~~[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 29:1489 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§14117. Reimbursement Methodology

~~A. Reimbursement for personal assistant services shall be a prospective flat rate for each approved unit of service that is provided to the recipient. One quarter hour is the standard unit of service for personal assistant services. Reimbursement shall not be paid for the provision of less than one quarter hour of service.~~
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 29:1489 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

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 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.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on June 29, 2022.

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 June 9, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on June 29, 2022 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 June 9, 2022. 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