

NOTICE OF INTENT

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

**Long Term Personal Care Services
(LAC 50:XV.Chapter 129)**

The Department of Health, Bureau of Health Services Financing and Office of Aging and Adult Services propose to amend LAC 50:XV.Chapter 129 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 propose to amend the provisions governing long term personal care services (LT-PCS) to update language pertaining to rights and responsibilities, cost reporting requirements, and add new language for a rate methodology to align current policies and procedures under the home and community based services waivers with the *Louisiana Administrative Code*.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations**

Chapter 129. Long Term Care

§12907. Recipient Rights and Responsibilities

A. Recipients who receive services under the Long-Term Personal Care Services Program have the right to actively participate in the development of their plan of care 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 care services and to participate in the following activities:

1. - 4. ...

5. signing off ~~on payroll logs~~/approving time entries and other documentation to verify staff work hours and to authorize payment;

A.6. - B ...

* * *

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 39:2508 (September 2013), LR 42:903 (June 2016), amended by the Department of Health, Bureau of

Health Services Financing and the Office of Aging and Adult Services, LR 50:

§12909. Standards for Participation

A. - A.2. ...

B. In addition, a Medicaid enrolled agency must:

1. ...

2. ~~assure~~ensure that all agency staff ~~is~~are employed in accordance with Internal Revenue Service (IRS) and U.S. Department of Labor regulations.

3. ensure that statewide criminal history background checks are performed on all unlicensed persons working for the provider in accordance with R.S. 40:1203.1 et. seq. and/or other applicable state law upon hire;

a. ensure that the provider does not hire unlicensed persons who have a conviction that bars employment in accordance with R.S. 40:1203.3 or other applicable state law;

i. the provider shall have documentation on the final disposition of all charges that bars employment pursuant to applicable state law;~~;~~

4. ensure that all employees, including contractors, have not been excluded from participation in the Medicaid programs by checking the databases upon hire and ~~then~~ monthly thereafter.

a. the provider shall maintain documentation of the results of these database checks.

C. - E.3. ...

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 and the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1980 (October 2017), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 50:

§12917. ~~Reimbursement~~Rate Methodology

A. ~~Reimbursement for personal care services shall be a~~
rate validation process will occur every two years, at a
~~prospective flat rate for each approved unit of service that is~~
~~provided~~minimum, every two years, to determine the sufficiency

~~participant of reimbursement rates. One quarter hour (15 minutes)~~
~~is~~ The rate validation process will involve the standard
~~unit comparison of service for personal care services current~~
~~provider . Reimbursement shall not be paid for the provision of~~
~~less than one quarter hour (15 minutes) of service. Additional~~
~~reimbursement~~ rates to reimbursement rates established shall not
~~be available for transportation furnished during~~ using ~~the course~~
~~of providing personal care services~~ department's reimbursement
methodology.

~~B~~ 1. The ~~state has~~ department's reimbursement
methodology will establish an estimated reimbursement through
the ~~authority to set and change LT PCS rates and/or provide lump~~
~~sum payments to LT PCS providers based upon funds allocated~~
~~by~~ summation of the ~~legislature~~ following two rate component
~~total~~ totals:

- a. adjusted staff cost rate component; and
- b. other operational cost rate component.

2. The adjusted staff cost rate component will be
determined in the following manner.

a. Direct service worker wage expense, contract
labor expense, and hours worked for reimbursable assistance
services will be collected from provider cost reports.

i. Collected wage and contract labor
expense will be divided by collected hours worked, on an

individual cost report basis, to determine a per hour labor rate for direct service workers.

ii. The individual cost report hourly labor rates will be aggregated for all applicable filed cost reports, outliers will be removed, and a simple average statewide labor rate will be determined.

b. A blended direct service worker labor rate will be calculated by comparing the simple average statewide labor rate to the most recently available, as of the calculation of the department's rate validation process, average personal care aide wage rate from the Louisiana Occupational Employment and Wages report for all Louisiana parishes published by the Louisiana Workforce Commission (or its successor).

i. If the simple average statewide labor rate is less than the wage rate from the Louisiana Occupational Employment and Wages report, a blended wage rate will be calculated using 50 percent of both wage rates.

ii. If the simple average statewide labor rate is equal to or greater than the wage rate from the Louisiana Occupational Employment and Wages report, the simple average statewide labor rate will be utilized.

c. An employee benefit factor will be added to the blended direct service worker wage rate to determine the unadjusted hourly staff cost.

i. Employee benefit expense allocated to reimbursable assistance services will be collected from provider cost reports.

ii. Employee benefit expense, on an individual cost report basis, will be divided by the cost report direct service wage and contract labor expense for reimbursable assistance services to calculate employee benefits as a percentage of labor costs.

iii. The individual cost report employee benefit percentages will be aggregated for all applicable filed cost reports, outliers will be removed, and a simple average statewide employee benefit percentage will be determined.

iv. The simple average statewide employee benefit percentage will be multiplied by the blended direct service worker labor rate to calculate the employee benefit factor.

d. The department will be solely responsible for determining if adjustments to the unadjusted hourly staff cost for items that are underrepresented or not represented in provider cost reports are considered appropriate.

e. The unadjusted hourly staff cost will be multiplied by a productive hours~~+~~ adjustment to calculate the hourly adjusted staff cost rate component total. The productive hours~~+~~ adjustment allows the reimbursement rate to reflect the

cost associated with direct service worker time spent performing required non-billable activities. The productive hours^L adjustment will be calculated as follows.

i. The department will determine estimates for the amount of time a direct service worker spends performing required non-billable activities during an eight hour period. Examples of non-billable time include, but are not limited to: meetings, substitute staff, training, wait-time, supervising, etc.

ii. The total time associated with direct service worker non-billable activities will be subtracted from eight hours to determine direct service worker total billable time.

iii. Eight hours will be divided by the direct service worker total billable time to calculate the productive hours' adjustment.

3. The other operational cost rate component will be calculated in the following manner.

a. Capital expense, transportation expense, other direct non-labor expense, and other overhead expense allocated to reimbursable assistance services will be collected from provider cost reports.

b. Capital expense, transportation expense, supplies and other direct non-labor expense, and other overhead

expense, on an individual cost report basis, will be divided by the cost report direct service wage and contract labor expense for reimbursable assistance services to calculate other operational costs as a percentage of labor costs.

c. The individual cost report other operational cost percentages will be aggregated for all applicable filed cost reports, outliers will be removed, and a simple average statewide other operational cost percentage will be determined.

d. The simple average other operational cost percentage will be multiplied by the blended direct service worker labor rate to calculate the other operational cost rate component.

4. The calculated department reimbursement rates will be adjusted to a one quarter hour unit of service by dividing the hourly adjusted staff cost rate component and the hourly other operational cost rate component totals by four.

5. The department will be solely responsible for determining the sufficiency of the current reimbursement rates during the rate validation process. Any reimbursement rate change deemed necessary due to the rate validation process will be subject to legislative budgetary appropriation restrictions prior to implementation.

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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), LR 37:3267 (November 2011), LR 39:1780 (July 2013), LR 42:904 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 47:594 (May 2021), LR 49:697 (April 2023), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 50:

§12919. ~~Cost Reporting Requirements~~Reimbursement

A. ~~LT-PCS providers must complete annual cost reports~~Reimbursement for long term personal care services shall be a prospective flat rate for each approved unit of service that is provided to the participant. One quarter hour (15 minutes) is the standard unit of service for LT-PCS~~personal care services~~. Reimbursement shall not be paid for the provision of less than one quarter hour (15 minutes) of service. Additional reimbursement shall not be available for transportation furnished during the course of providing LT-PCS.

~~personal care services.~~

B. ~~Each LT-PCS provider shall complete~~The state has the ~~LDH approved cost report and submit the cost report(s)~~authority to set and change LT-PCS rates and/or provide lump sum payments to LT-PCS providers based upon funds allocated by the ~~department~~ no later than five months after the state fiscal year ends (June 30)legislature.

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, LR 39:1052 (April 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR:47:594 (May 2021), amended LR 50:

§12921. ~~Direct Service Worker Wages, Other Benefits, and Workforce Bonus Payments~~Cost Reporting Requirements [Formerly §12919]

A. ~~Establishment of Direct Service Worker Wage Floor~~LT-PCS providers must submit annual cost reports with a fiscal year from July 1 through June 30 to the department to verify expenditures and~~Other Benefits~~to support rate setting for the services rendered to HCBS LT-PCS participants.

~~1. Long term personal care services (LT-PCS) providers that were providing LT-PCS on or after October 1, 2021~~

~~and employing direct service workers (DSWs) will receive the equivalent of a \$4.50 per hour rate increase.~~

~~2. This increase or its equivalent will be applied to all service units provided by DSWs with an effective date of service for the LT PCS provided on or after October 1, 2021.~~

~~3. All LT PCS providers affected by this rate increase shall be subject to passing 70 percent of their rate increases directly to the DSW in various forms. These forms include a minimum wage floor of \$9 per hour and wage and non-wage benefits. This wage floor and wage and non-wage benefits are effective for all affected DSWs of any working status, whether full-time or part-time.~~

~~4. The LT PCS provider rate increases, wage floor and/or wage and non-wage benefits will end March 31, 2025 or when the state's funding authorized under section 9817 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-002) is exhausted.~~

~~5. The Department of Health (LDH) reserves the right to adjust the DSW wage floor and/or wage and non-wage benefits as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.~~1. - 5.- Repealed.

B. ~~Establishment of Direct Service Worker Workforce Bonus Payments~~Each LT-PCS provider must complete the LDH approved cost report and submit the cost report(s) to the department no later

than November 30, five months after the state's June 30 fiscal year end date.

~~1. LT PCS providers who provided services from April 1, 2021 to October 31, 2022 shall receive bonus payments of \$300 per month for each DSW that worked with participants for those months.~~

~~2. The DSW who provided services from April 1, 2021 to October 31, 2022 to participants must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected DSWs of any working status, whether full time or part time.~~1. - 2.- Repealed.

C. ~~Audit Procedures~~ When the LT-PCS provider fails to submit a cost report by the last day of November 30th, which is five months after the state's June 30 fiscal year end date (June 30), a penalty of 5 percent of the total monthly payment for Direct Service Worker Wage Floor, Other Benefits, the first month and Workforce Bonus Payments a progressive penalty of 5 percent of the total monthly payment for each succeeding month may be levied and withheld from the provider's payment for each month that the cost report is due, not extended and not received. If no claims are submitted for payment during the time of the penalty implementation, the penalty will be imposed when the provider commences submitting claims for payment. The

late filing penalty is non-refundable and not subject to an administrative appeal.

~~1. The wage enhancements, wage and non wage benefits and bonus payments reimbursed to LT PCS providers shall be subject to audit by LDH.~~

~~2. LT PCS providers shall provide LDH or its representative all requested documentation to verify that they are in compliance with the DSW wage floor, wage and non wage benefits and/or bonus payments.~~

~~3. This documentation may include, but is not limited to, payroll records, wage and salary sheets, check stubs, etc.~~

~~4. LT PCS providers shall produce the requested documentation upon request and within the timeframe provided by LDH.~~

~~5. Non compliance or failure to demonstrate that the wage enhancement, wage and non wage benefits and/or bonus payments were paid directly to DSWs may result in the following:~~

~~a. sanctions; or~~

~~b. disenrollment from the Medicaid program.~~

~~D. Sanctions for Direct Service Worker Wage Floor, Other Benefits, and Workforce Bonus Payments~~

~~1. The LT PCS provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests~~

~~issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:~~

~~_____ a. failure to pass 70 percent of the LT PCS provider rate increases directly to the DSWs in the form of a floor minimum of \$9 per hour and in other wage and non wage benefits and/or the \$250 monthly bonus payments;~~

~~_____ b. the number of employees identified that the LT PCS provider has not passed 70 percent of the LT PCS provider rate increases directly to the DSWs in the form of a floor minimum of \$9 per hour and in other wage and non wage benefits and/or the \$250 monthly bonus payments;~~

~~_____ c. the persistent failure to not pass 70 percent of the LT PCS provider rate increases directly to the LT PCS DSWs in the form of a floor minimum of \$9 per hour and in other wage and non wage benefits and/or the \$250 monthly bonus payments; or~~

~~_____ d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.~~ C.1. - D.1.d. - 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, Bureau of Health Services Financing, LR 39:1052 (April 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult

Services, LR:47:594 (May 2021), amended ~~Promulgated by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 49:697 (April 2023), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 50:~~

§12923. Direct Service Worker Wages, Other Benefits, and Workforce Bonus Payments [Formerly §12921]

A. Establishment of Direct Service Worker Wage Floor and Other Benefits

1. Long term-personal care services (LT-PCS) providers that were providing LT-PCS on or after October 1, 2021 and employing direct service workers (DSWs) will receive the equivalent of a \$4.50 per hour rate increase.

2. This increase, or its equivalent, will be applied to all service units provided by DSWs with an effective date of service for the LT-PCS provided on or after October 1, 2021.

3. All LT-PCS providers affected by this rate increase shall be subject to passing 70 percent of their rate increases directly to the DSW in various forms. These forms include a minimum wage floor of \$9 per hour and wage and non-wage benefits. This wage floor and wage and non-wage benefits are effective for all affected DSWs of any working status, whether full-time or part-time.

4. The Louisiana Department of Health (LDH) reserves the right to adjust the DSW wage floor and/or wage and non-wage benefits as needed through appropriate rulemaking promulgation consistent with the Administrative Procedure Act.

B. Establishment of Direct Service Worker Workforce Bonus Payments

1. LT-PCS providers who provided services from April 1, 2021 to October 31, 2022, shall receive bonus payments of \$300 per month for each DSW that worked with participants for those months.

2. The DSW who provided services from April 1, 2021 to October 31, 2022 to participants must receive at least \$250 of this \$300 bonus payment paid to the provider. This bonus payment is effective for all affected DSWs of any working status, whether full-time or part-time.

C. Audit Procedures for Direct Service Worker Wage Floor, Other Benefits, and Workforce Bonus Payments

1. The wage enhancements, wage and non-wage benefits and bonus payments reimbursed to LT-PCS providers shall be subject to audit by LDH.

2. LT-PCS providers shall provide LDH or its representative all requested documentation to verify that they are in compliance with the DSW wage floor, wage and non-wage benefits and/or bonus payments.

3. This documentation may include, but is not limited to: payroll records, wage and salary sheets, check stubs, etc.

4. LT-PCS providers shall produce the requested documentation upon request and within the timeframe provided by LDH.

5. Non-compliance or failure to demonstrate that the wage enhancement, wage and non-wage benefits and/or bonus payments were paid directly to DSWs may result in the following:

a. sanctions; or

b. disenrollment from the Medicaid program.

D. Sanctions for Direct Service Worker Wage Floor, Other Benefits, and Workforce Bonus Payments

1. The LT-PCS provider will be subject to sanctions or penalties for failure to comply with this Rule or with requests issued by LDH pursuant to this Rule. The severity of such action will depend upon the following factors:

a. failure to pass 70 percent of the LT-PCS provider rate increases directly to the DSWs in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;

b. the number of employees identified that the LT-PCS provider has not passed 70 percent of the LT-PCS provider rate increases directly to the DSWs in the form of a floor

minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments;

c. the persistent failure to not pass 70 percent of the LT-PCS provider rate increases directly to the LT-PCS DSWs in the form of a floor minimum of \$9 per hour and in other wage and non-wage benefits and/or the \$250 monthly bonus payments; or

d. failure to provide LDH with any requested documentation or information related to or for the purpose of verifying compliance with this Rule.

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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (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 39:2509 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 50:

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 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.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2024.

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 October 10, 2024. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 31, 2024 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 October 10, 2024. 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.

Michael Harrington, MBA, MA

Secretary