

**NOTICE OF INTENT**

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

**Personal Care Services - Long-Term  
Freedom of Choice and Service Delivery  
(LAC 50:XV.12901 and 12913)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.12901 and §12913 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 and Hospitals, Bureau of Health Services Financing provides Long-Term Personal Care Services (LT-PCS) under the Medicaid State Plan. The department promulgated an Emergency Rule which amended the provisions governing LT-PCS in order to restrict the number of participants an individual can concurrently represent, and to adopt provisions for the removal of service providers from the LT-PCS freedom of choice list when certain departmental proceedings are pending against the provider, and to offer freedom of choice to the provider's LT-PCS participants. This Emergency Rule also clarifies the provisions governing service delivery (*Louisiana Register*, Volume 40, Number 5). This proposed Rule is being

promulgated to continue the provisions of the May 20, 2014  
Emergency Rule.

## 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. - F.2.b. ...

3. No individual may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based service programs. This includes but is not limited to:

- a. the Program of All-Inclusive Care for the Elderly;
- b. Long-term Personal Care Services;
- c. the Community Choices Waiver; and
- d. the Adult Day Health Care Waiver.

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. one or more of the following departmental proceedings are pending against a LT-PCS participant's service

provider:

- a. revocation of the provider's home and community-based services license;
- b. exclusion from the Medicaid Program;
- c. termination from the Medicaid Program; or
- d. withholding of Medicaid reimbursement as authorized by the department's surveillance and utilization review (SURS) Rule (LAC 50:I.Chapter 41);

2. the service provider fails to timely renew its home and community-based services license as required by the home and community-based services providers licensing standards Rule (LAC 48:I.Chapter 50); or

3. the service provider's assets have been seized by the Louisiana Attorney General's Office.

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:

**§12913. Service Delivery**

A. - B. ...

C. Participants are not permitted to receive LT-PCS while living in a home or property owned, operated, or controlled by an owner, operator, agent, or employee of a licensed provider of long-term care services, and providers are prohibited from providing and billing for services under these circumstances. Participants may not live in the home of a direct support worker unless the direct support worker is related by blood or marriage to the participant.

1. The provisions of §12913.C may be waived with prior written approval by OAAS or its designee.

D. - F. ...

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 LR 30:2833 (December 2004), 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 Financing and the Office of Aging and Adult Services, LR 39:2509 (September 2013), LR 41:

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 ensuring the integrity of LT-PCS participants' freedom of choice in the selection of available qualified service providers as well as ensuring quality services are provided.

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.

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 29, 2015 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.

Kathy H. Kliebert

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

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Office: Bureau of Health Services Financing

Return Address: P.O. Box 91030  
Baton Rouge, LA

Rule Title: Personal Care Services - Long-Term Freedom of Choice and Service Delivery

Date Rule Takes Effect: May 20, 2014

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 implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 14-15. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

*It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 14-15. It is anticipated that \$324 will be collected in FY 14-15 for the federal share of the expense for promulgation of this proposed rule and the final rule.*

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

*This proposed Rule continues the provisions of the May 20, 2014 Emergency Rule which amended the provisions governing LT-PCS in order to restrict the number of participants an individual can concurrently represent, and to adopt provisions for the removal of service providers from the waiver freedom of choice list when certain departmental proceedings are pending against the provider, and to offer freedom of choice to the provider's waiver participants. This proposed Rule also clarifies the provisions governing service delivery. It is anticipated that implementation of this proposed rule will not have economic costs or benefits for FY 14-15, FY 15-16, and FY 16-17.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

*This rule has no known effect on competition and employment.*

*J. Ruth Kennedy*  
Signature of Agency Head or Designee

*Evan Brassel, Staff Director*  
Legislative Fiscal Officer 12-9-14  
or Designee

J. Ruth Kennedy, Medicaid Director  
Typed name and Title of Agency Head or Designee

12-9-14  
Date of Signature

*J. St. ...*  
DHH/BHSF Budget Head

12/9/14  
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 continues the provisions of the May 20, 2014 Emergency Rule which amended the provisions governing LT-PCS in order to restrict the number of participants an individual can concurrently represent, and to adopt provisions for the removal of service providers from the waiver freedom of choice list when certain departmental proceedings are pending against the provider, and to offer freedom of choice to the provider's waiver participants. This Emergency Rule also clarifies the provisions governing service delivery.*

- 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 and Hospitals, Bureau of Health Services Financing provides Long-Term Personal Care Services (LT-PCS) under the Medicaid State Plan. The department promulgated an Emergency Rule which amended the provisions governing LT-PCS in order to restrict the number of participants an individual can concurrently represent, and to adopt provisions for the removal of service providers from the waiver freedom of choice list when certain departmental proceedings are pending against the provider, and to offer freedom of choice to the provider's waiver participants. This proposed Rule also clarifies the provisions governing service delivery (Louisiana Register, Volume 40, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2014 Emergency Rule.*

- 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. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 14-15. It is anticipated that \$648 will be expended in FY 14-15 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 14-15	FY 15-16	FY 16-17
PERSONAL SERVICES			
OPERATING EXPENSES	\$648	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
<b>TOTAL</b>	<b>\$648</b>	<b>\$0</b>	<b>\$0</b>

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.

*In FY 14-15, \$648 will be spent 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 14-15	FY 15-16	FY 16-17
STATE GENERAL FUND	\$324	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$324	\$0	\$0
OTHER (Specify)			
<b>Total</b>	<b>\$648</b>	<b>\$0</b>	<b>\$0</b>

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 14-15	FY 15-16	FY 16-15
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$324	\$0	\$0
LOCAL FUNDS			
<b>Total</b>	<b>\$324</b>	<b>\$0</b>	<b>\$0</b>

*\*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.

*In FY 14-15 \$324 will be collected for the federal share of the administrative 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.)

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- 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 not have economic costs or benefits for FY 14-15, FY 15-16, and FY 16-17.*

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.

*This rule has no known effect on competition and employment.*