

**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 a provider of services who is not related by blood or marriage to the participant.~~ 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