



LNHA State Regulatory Update: July 2017

Emergency Rules

Home and Community-Based Waivers- Electronic Visit Verification (LAC 50:XXI.9305)

The emergency rule was promulgated in order to adopt requirements which mandate that providers of personal assistant services must utilize the electronic visit verification (EVV) system designated by the Department for automated scheduling, time and attendance tracking and billing for certain home and community-based services. The current emergency rule continues the provisions of the April 1, 2015, emergency rule.

Nursing Facilities -- Reimbursement Methodology (LAC 50:II.20001)

As a result of the budgetary shortfall in the state fiscal year (SFY) 2017-2018, the Department has determined that it is necessary to amend the provisions governing the reimbursement methodology for nursing facilities in order to suspend the provisions of LAC 50:II.Chapter 200 and to impose provisions to ensure that the current rates in effect do not increase for the SFY 2018 rating period. This action is being taken to avoid a budget deficit in the Medical Assistance Program. It is estimated that implementation of this emergency rule will have no fiscal impact for the state fiscal year 2017-2018 because Medicaid payments for nursing facility services will remain at the same level.

Effective July 1, 2017, the Department of Health amends the provisions governing the reimbursement methodology for nursing facilities as follows:

- C. Effective for the rate period of July 1, 2017, through June 30, 2018, the department shall suspend the provisions of LAC 50:II.Chapter 200 governing the reimbursement methodology for nursing facilities and impose the following provisions governing reimbursements for nursing facility services.
 1. During this time period no inflation factor will be applied to the base resident day weighted medians and prices calculated as of July 1, 2016.
 2. All costs and cost components that are required by Rule to be trended forward will only be trended forward to the midpoint of the 2017 state fiscal year (December 31, 2016).
 3. The base capital per square foot value, land value per square foot, and per licensed bed equipment value utilized in the calculation of the fair rental value (FRV) component will be set equal to the value of these items as of July 1, 2016.
 4. Base capital values for the Bed Buy-Back Program (LAC 50:II.20012) purposes will be set equal to the value of these items as of July 1, 2016.
 5. Nursing facility providers will not have their weighted age totals for the FRV component calculation purposes increased by one year as of July 1, 2017.
 6. As of the July 1, 2018 rate setting, nursing facility provider weighted age totals for the FRV component calculation purposes will be increased by two years to account for the suspended year of aging occurring as of the July 1, 2017 rate period.
 7. No other provisions of LAC 50:II.Chapter 200 shall be suspended for this time period.

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 Emergency Rule.

Personal Care Services -- Long-Term-Standards for Participation-Electronic Visit Verification (LAC 50:XV.12909)

The Department promulgated an emergency rule which amended the provisions governing long-term personal care services (LT-PCS) in order to adopt requirements which mandate the 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. This emergency rule is being promulgated to continue the provisions of the April 1, 2015, emergency rule.

Notice of Intent

Adult Day Health Care -- Licensing Standards (LAC 48:I.Chapter 42)

The Department of Health has determined it is necessary to amend the provisions governing Adult Day Health Care. Accordingly, the Department has filed a notice of intent to promulgate a rule which will do the following: 1) adopt provisions which will allow licensed ADHC providers certified as programs of all-inclusive care for the elderly (PACE) to achieve accreditation status for licensure; 2) allow for the inactivation of the provider's license under certain circumstances and specific provisions for cessation of business; and 3) clarify the requirements for checking the direct service worker registry and obtaining criminal history checks.

- The complete text of the proposed amendments can be found [here](#) on page 1451 (marked as page 220 in the .PDF).

Adult Residential Care Providers (ARCP) -- Licensing Standards (LAC 48:I.Chapter 68)

The Department of Health proposes to amend the provisions governing the licensing standards for ARCPs in order to include specific provisions for continuing education for ARCP administrators and to ensure consistency with other licensing standards. As a reminder, there are four modules of ARCPs with varying levels of service. They are:

- Level 1 personal care homes
- Level 2 shelter care homes
- Level 3 assisted living facilities
- Level 4 adult residential care providers (Level 4 is the only module that can provide "intermittent nursing services." A moratorium has been placed on the licensure of Level 4 ARCPs until July 1, 2018.)

Some of the amendments being proposed include:

- Level 3 and 4 directors shall have a bachelor's degree plus two years administrative experience in certain fields, **or** in lieu of a bachelor's degree have six years administrative experience in certain fields **and** a master's degree in certain fields or be a licensed nursing facility administrator

- Criminal history checks and offers of employment shall be conducted in accordance with the law
 - Each facility shall have a procedure for reporting abuse
 - Each facility shall have a policy that addresses the prohibitive use of social media
- The full text of the proposed amendments can be found [here](#) on page 1463 (marked as page 232 in the .PDF).

Home and Community-Based Services (HCBS) Waivers and Standards for Participation (LAC 50:XXI.101, 301, 305 and Chapter 9

The Department proposes to amend the general provisions governing HCBS waivers in order to: 1) adopt removal criteria for the freedom of choice list; 2) revise the provisions governing termination of coverage for displaced residents; 3) adopt criteria related to the settings in which all home and community-based services are delivered; 4) adopt criteria for use of an electronic visit verification (EVV) system for home and community-based services; and 5) adopt incident reporting requirements.

Some of the amendments being proposed include:

- HCBS must be provided in a setting that integrates and supports full access of the participants to the greater community and must include opportunities to seek employment, control personal resources and engage in community life.
 - The setting is selected by the participant from among setting options including non-disability specific settings and an option for a private unit in a residential setting
 - In a provider-owned or controlled non-residential setting participants shall have the freedom to control their own schedules and activities and have visitors of their own choosing
- The full text of the proposed amendments can be found [here](#) on page 1465 (marked as page 234 in the .PDF).

Personal Care Services-Long-Term -- Standards for Participation (LAC 50:XV.12901 and 12909)

The Department of Health 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.

Some of the amendments being proposed include:

- Each LT-PCS applicant/recipient shall be assessed using a uniform interRAI home care assessment tool or a subsequent assessment tool designated by OAAS. The 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 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.
 - The late-loss ADLs 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 the late-loss ADLs.
 - An electronic visit verification (EVV) system must be used for automated scheduling, time and attendance tracking and billing for LT-PCS services
- The full text of the proposed rules can be found [here](#) on page 1469 (marked as page 239 in the .PDF).

The full text of the July edition of the *Louisiana Register* can be found [here](#). A public hearing will be held on all on the above-referenced rules in the Notice of Intent on August 24, 2017. All comments regarding the rules are due by close of business on August 25, 2017. If you have any comments, contact LNHA Legal and Policy Director Wes Hataway at whataway@lnha.org before the deadline.