

**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**  
**(LAC 50:XV.Chapter 129)**

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.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 and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing long-term personal care services (LT-PCS) in order to restrict the number of participants an individual can concurrently represent, 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, offer freedom of choice to the provider's LT-PCS participants, and clarify the provisions governing service delivery (*Louisiana Register*, Volume 41, Number 3).

The department has now determined that it is necessary to

amend the provisions governing LT-PCS in order to 1) terminate the Louisiana Personal Options Program (La POP); 2) revise the eligibility requirements for shared LT-PCS; and 3) clarify the provisions governing the activities of daily living.

**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.1.b. ...

2. The functions of a responsible representative are to:

a. assist ~~and~~ or represent, as needed, the recipient in the assessment, care plan development and service delivery processes; and

2.b. - G.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 29:911 (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 41:540 (March 2015), LR 42:

**§12902. Participant Direction Option**

~~A. The Office of Aging and Adult Services implements a pilot program, the Louisiana Personal Options Program (La POP), which will allow recipients who receive long term personal care services (LT PCS) to have the option of utilizing an alternative method to receive and manage their services. Recipients may direct and manage their own services by electing to participate in La POP, rather than accessing their services through a traditional personal care agency.~~

~~1. La POP shall be implemented through a phase in process in Department of Health and Hospitals administrative regions designated by OAAS.~~

~~2. La POP participants will use a monthly budget allowance to manage their own personal care services. Some of the monthly allowance may be used to purchase items that increase a participant's independence or substitute for his/her dependence on human assistance.~~

~~B. Participants are required to use counseling and financial management services in order to assume responsibility for directing their services and managing their budget.~~

~~1. A financial management agency is utilized to provide financial management and payroll services to La POP participants.~~

~~2. With the assistance of a services consultant, participants develop a personal support plan based on their approved plan of care and choose the individuals they wish to hire to provide the services.~~

~~C. An orientation to the Louisiana Personal Options Program, including participant roles and responsibilities, is required for all participants prior to the completion of enrollment in the program. The intent of the orientation is to provide participants with a program handbook and other tools they need to effectively and safely manage their services.~~

~~D. La POP participants may elect to discontinue participation in the program at any time. The services consultant must be notified and will begin the disenrollment process within five business days from the date of notification. A face-to-face meeting may be required if the individual remains eligible for long-term personal care services.~~

~~1. La POP services will continue until the transition to services provided by a personal care agency is completed.~~

~~2. Once disenrolled from La POP, the participant must continue to receive services through a traditional personal~~

~~care services agency for a minimum of three months before re-enrollment in La POP can be considered.~~

~~E. La POP participants may be involuntarily disenrolled from the program for any of the following reasons.~~

~~1. Health, Safety and Well-being. The Office of Aging and Adult Services or its designee makes a determination that the health, safety and well-being of a participant is compromised or threatened by continued participation in La POP.~~

~~2. Change in Condition. The participant's ability to direct his/her own care diminishes to a point where he/she can no longer do so and there is no responsible representative available to direct the care.~~

~~3. Misuse of Monthly Allocation of Funds. The LA POP participant or his/her responsible representative uses the monthly budgeted funds to purchase items unrelated to personal care needs or otherwise misappropriate the funds.~~

~~4. Failure to Provide Required Documentation. The participant or his/her responsible representative fails to complete and submit employee time sheets in a timely and accurate manner, or provide required documentation of expenditures and related items as prescribed in the Louisiana Personal Options Program's Roles and Responsibility agreement.~~

~~5. Unsafe Working Conditions. The conditions in the workplace prevent the direct service worker from performing~~

~~his/her duties or threaten his/her safety. The direct service worker must document and report these situations to OAS or its designee.~~ 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 Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), repealed LR 42:

**§12903. Covered Services**

A. *Personal care services* are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care 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 the recipient. ADLs include tasks such as:

1. - 4. ...

5. ~~transferring~~ transferring-the manner in which an individual moves from one surface to another (excludes getting

on and off the toilet, and getting in/ and out of the tub/shower, from a bed to a chair);

A.6. - C. ...

1. ~~La POP participants may choose to use some of their monthly budget to purchase non-medical transportation~~If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

a. ~~If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.~~Repealed.

D. ...

E. ~~La POP participants may choose to use their services budgets to pay for items that increase their independence or substitute for their dependence on human assistance. Such items must be purchased in accordance with the policies and procedures established by OAAS~~For participants receiving LT-PCS with the Adult Day Health Care (ADHC) Waiver, personal care services may be provided by one worker for up to three long-term personal care service recipients who live together, and who have a common

direct service provider.

F. ~~Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.~~ 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 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), LR 42:

**§12905. Eligibility Criteria**

A. Personal care services shall be available to recipients who are 65 years of age or older, or 21 years of age or older and have a disability. Persons with a disability must ~~as~~ meet the disability criteria established by the Social Security Administration.

B. - B.3.c.

C. ~~Persons who are eligible to receive LT-PCS have the option of participating in La POP. To participate in La POP, the~~



~~individual must:~~

- ~~1. give informed consent to participate;~~
  - ~~2. be able to understand the rights, risks, and responsibilities of managing his/her own care; and~~
  - ~~3. be willing to complete and follow a personal supports plan with the help of a services consultant; or~~
  - ~~4. if unable to make decisions independently, have a willing personal representative who understands the rights, risks and responsibilities of managing the participant's care~~
- Persons designated as the responsible representative of an individual receiving services under LT-PCS may not be the paid direct service worker of the individual they are representing.

~~D. Persons designated as the personal representative of either an individual receiving services under LT PCS or the La POP option may not be the paid direct service worker of the individual they are representing.~~ 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 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006), 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 39:2507 (September 2013), LR 42:

**§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. - 6. ...

7. ~~transferring or discharging~~ changing the personal care worker assigned to provide their services;

8. - B. ...

~~C. In addition to these rights, a La POP participant has certain responsibilities, including:~~

~~1. managing their services budget in accordance with an approved personal supports plan;~~

~~2. notifying the services consultant at the earliest reasonable time of admission to a hospital, nursing facility, rehabilitation facility or any other institution;~~

~~3. interviewing, hiring, supervising and firing their direct service workers and other employer related~~

functions:

~~4. completing and submitting all required paperwork in a timely manner and complying with all applicable tax and labor laws;~~

~~5. treating their employees, the services consultant and La POP staff with respect;~~

~~6. assuring that the direct service worker is on the Louisiana Direct Services Worker Registry before wages can be authorized and paid;~~

~~7. authorizing and making changes in worker wages and benefits within the authorized budget of the personal supports plan;~~

~~8. developing the work schedule for their direct service worker;~~

~~9. training the direct service worker in the specific skills necessary to maintain the participant's independent functioning to remain in the home;~~

~~10. developing a viable individualized emergency back-up plan in the personal supports plan;~~

~~11. accurately signing off on payroll logs and other documentation to verify staff work hours and authorizing payment;~~

~~12. cooperating with the Department's quality assurance, program integrity, and program evaluation activities;~~

and

~~13. providing any documentation requested by the Department or its designee in a timely manner.~~C. - C.13.

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 29:912 (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:

**§12910. La POP Standards for Participation**

~~A. Direct service workers employed under LA POP must meet the same requirement as those hired by a PCS agency.~~

~~B. All workers must be employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.~~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 Aging and Adult Services, LR 34:2580

(December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 39:2508 (September 2013), repealed LR 42:

**§12911. Staffing Requirements**

A. All staff providing direct care to the recipient, ~~whether they are employed by a PCS agency or a recipient participating in La POP,~~ must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. - B.1.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 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (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:

**§12912. Training**

~~A. Training costs for direct service workers employed by La POP participants shall be paid out of the La POP participant's personal supports plan budget.~~ 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 Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2509 (September 2013), repealed LR 42:

**§12913. Service Delivery**

A. ...

B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state without ~~written prior~~ approval of OAAS or its designee, ~~through the plan of care or otherwise.~~

C. Participants are not permitted to ~~receive LT-PCS while living~~ live 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. ...

D. ~~Participants are not permitted to live in homes or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant~~ Place(s) of service must be documented in the plan of care and service logs.

E. ~~Place(s) of service must be documented in the plan of care and service logs~~ It is permissible for an LT-PCS recipient to use his/her approved LT-PCS weekly allotment flexibly provided that it is done so in accordance with the recipient's preferences and personal schedule and is properly documented in accordance with OAS policy.

F. ~~It is permissible for an LT PCS recipient to use his/her approved LT PCS weekly allotment flexibly provided that it is done so in accordance with the recipient's preferences and personal schedule and is properly documented in accordance with OAS policy.~~ 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 29:913 (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 42:

**§12917. Reimbursement Methodology**

A. - B.8.d. ...

C. ~~La POP Payment Methodology~~ Effective for dates of service on or after February 1, 2009, the reimbursement rate for long term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

~~1. The budget amount will be based on the number of service hours (in one quarter hour increments) approved by OAAS or its designee multiplied by the established fee schedule rate. The product of approved hours times the fee schedule rate will be the overall budget amount. A percentage of the overall budget will be used to offset some of the administrative costs for the fiscal management agency and the counseling support functions. After the percentage has been deducted from the overall budget, the remainder will be the budget amount for the individual participant. The participant will allocate these budget funds to cover personal support services and other items in his/her approved personal support plan.~~

~~2. Expenditures shall only be made in accordance~~



~~with the approved personal supports plan and the Louisiana Personal Options Program guidelines.~~

~~3. The authorized hours and fee schedule rate will be the same whether the personal care services are agency-directed or participant-directed.~~1. - 3. Repealed.

~~D. Effective for dates of service on or after February 1, 2009, the reimbursement rate for long-term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009~~Effective for dates of service on or after August 4, 2009, the reimbursement rate for long-term personal care services shall be reduced by 4.8 percent of the rate on file as of August 3, 2009.

~~E. Effective for dates of service on or after August 4, 2009, the reimbursement rate for long-term personal care services shall be reduced by 4.8 percent of the rate on file as of August 3, 2009~~Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010.

~~F. Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010~~Effective for dates of service on or after January 1, 2011, the reimbursement rate for long-term personal

care services shall be reduced by 5.8 percent of the rate on file as of December 31, 2010.

~~G. Effective for dates of service on or after January 1, 2011, the reimbursement rate for long-term personal care services shall be reduced by 5.8 percent of the rate on file as of December 31, 2010.~~  
Effective for dates of service on or after April 20, 2011, shared long-term personal care services shall be reimbursed:

1. 80 percent of the rate on file as of April 19, 2011 for two participants; and

2. 70 percent of the rate on file as of April 19, 2011 for three participants.

~~H. Effective for dates of service on or after April 20, 2011, shared long-term personal care services shall be reimbursed:~~  
Effective for dates of service on or after July 1, 2012, the reimbursement rate for long-term personal care services furnished to one participant shall be reduced by 1.5 percent of the rate on file as of June 30, 2012.

~~1. 80 percent of the rate on file as of April 19, 2011 for two participants; and~~

~~2. 70 percent of the rate on file as of April 19, 2011 for three participants.~~

~~I. Effective for dates of service on or after July 1, 2012, the reimbursement rate for long-term personal care~~

~~services furnished to one participant shall be reduced by 1.5 percent of the rate on file as of June 30, 2012.~~ H.1. - I.

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 29:913 (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:

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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](mailto: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, February 25, 2016 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