

NOTICE OF INTENT

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

**Nursing Facilities
Levels of Care
(LAC 50:II.10154 and 10156)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:II.10154 and §10156 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 the standards for payment for nursing facilities in order to: 1) reflect the change in the current assessment tool utilized for level of care determinations; and 2) modify the pathway criteria language in order to include updated terminology contained within the new assessment tool.

Title 50

**PUBLIC HEALTH-MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 3. Standards for Payment**

Chapter 101. Standards for Payment for Nursing Facilities

Subchapter G. Levels of Care

§10154. Nursing Facility Level of Care Determinations

A. ...

B. In order for an individual to meet nursing facility level of care (NFLOC), functional and medical eligibility must be met as set forth and determined by the Office of Aging and Adult Services (OAAS). The functional and medical eligibility process is frequently referred to as the "nursing facility level of care determination."

C. ...

D. Individuals who are approved by OAAS, or its designee, as having met ~~nursing facility level of care~~NFLOC must continue to meet medical and functional eligibility criteria on an ongoing basis.

E. A LOC screening conducted via telephone shall be superseded by a face-to-face ~~minimum data set (MDS) assessment,~~ ~~minimum data set for home care (MDS HC)~~LOC assessment, or audit review LOC determination as determined by OAAS or its designee.

F. - G. ...

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, Division of Long Term

Supports and Services, LR 32:2083 (November 2006), amended by the Office of Aging and Adult Services, LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:341 (January 2011), LR 39:1471 (June 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§10156. Level of Care Pathways

A. - B. ...

C. The level of care pathways elicit specific information, within a specified ~~look-back~~time period, regarding the individual's:

1. - 4. ...

D. Activities of Daily Living Pathway

1. - 2. ...

3. The ADLs for which the LOC assessment elicits information include but are not limited to:

a. locomotion~~moving~~how the individual moved around in ~~the individual's~~this or her home;

b. dressing~~how the individual dresses~~dressed/undressesundressed;

c. eating~~how the individual ate or consumed food-is-consumed~~ (this does not include meal preparation);

d. bed mobility—~~moving~~how the individual moved around while in bed;

e. transferring—how the individual ~~moves~~moved from one surface to another (this excludes getting on and off of the toilet and getting in and out of the tub/shower);

f. toileting—~~includes getting~~how the individual got on and off the toilet (toilet transfer), ~~wiping~~wiped, ~~arranging clothing~~arranged clothes, etc.;

g. personal hygiene—how the individual managed personal hygiene (this excludes baths/showers); and

h. bathing—how the individual took a full-body bath or shower (this excludes washing of hair and back).

4. Since an individual can vary in ADL performance from day to day, OAAS trained assessors shall capture the total picture of ADL performance over the specified ~~look-back~~time period.

5. In order for an individual to be approved under the ADL Pathway, the individual must score at the:

a. limited assistance level or greater on ~~toilet use~~toileting, transferring, or bed mobility; or

b. ...

E. Cognitive Performance Pathway.

1. This pathway identifies individuals with the following cognitive difficulties:

a. short-term memory which determines the individual's functional capacity to remember recent events;

b. cognitive skills for daily decision making which determines the individual's actual performance in making everyday decisions about tasks or activities of daily living such as:

- i. planning how to spend ~~his/her~~their day;
- ii. choosing what to wear; ~~or~~
- iii. ~~reliably using canes/walkers or other assistive devices/equipment, if needed~~knowing when to eat;
- iv. knowing and using space in home appropriately;
- v. using awareness of one's own strengths and limitations to ask for help when needed;
- vi. using environmental cues to organize and plan the day;
- vii. making prudent decisions regarding how and when to go places; and
- viii. using canes/walkers or other assistive devices/equipment reliably.

c. ...

2. In order for an individual to be approved under the cognitive performance pathway, the individual must have any one of the conditions noted below:

- a. ~~be~~ severely impaired or greater impairment in daily decision making (e.g., never or rarely makes decisions);
- b. have a short-term memory problem and moderately impaired in daily decision making ~~is moderately impaired~~ (e.g., the individual's decisions are consistently poor or unsafe, and cues or supervision ~~is~~are required at all times);
- c. have a short-term memory problem and ~~is the individual is~~ sometimes understood (e.g., the individual's ability is limited to making concrete requests) or is rarely or never understood;
- d. ~~have a short-term memory problem and is rarely or never~~ moderately impaired in daily decision making and the individual is often understood (e.g., the individual has difficulty finding words or finishing thoughts, and prompting is usually required);
- e. ~~be~~ moderately impaired in daily decision making and the individual is sometimes understood (e.g., the individual's ability ~~decisions are consistently poor or unsafe, cues or supervision is required at all times~~) and the individual ~~is usually understood (e.g., the individual has difficulty finding words or finishing thoughts and prompting may be required~~ limited to making concrete requests) or is rarely or never understood; or

f. ~~be moderately~~minimally impaired in daily decision making (e.g., ~~the individual's~~his/her decisions are ~~consistently~~ poor or unsafe in specific situations, and cues or supervision ~~is required at all times~~ are needed) and the individual is sometimes understood, (e.g., ~~his/her~~the individual's ability is limited to making concrete requests) or is rarely or never understood;

~~g. be moderately impaired in daily decision making (e.g., the individual's decisions are consistently poor or unsafe, cues or supervision is required at all times) and the individual is rarely or never understood;~~

~~h. be minimally impaired in daily decision making (e.g., the individual has some difficulty in new situations or his/her decisions are poor and requires cues and supervision in specific situations only) and the individual is sometimes understood (e.g., the individual's ability is limited to making concrete requests); or~~

~~i. be minimally impaired in daily decision making (e.g., the individual has some difficulty in new situations or his/her decisions are poor, cues and supervision are required in specific situations only) and the individual is rarely or never understood~~g. - i. Repealed.

F. Physician Involvement Pathway

1. - 3.b. ...

4. Supporting documentation is required and must include:

a. ...

b. the home health care plans, or other medical provider documentation documenting the diagnosis, treatments, and conditions within the designated time frames; or

c. ...

G. Treatments and Conditions Pathway

1. - 2.h. ...

3. In order for an individual to be approved under the treatments and conditions pathway, the individual must have:

a. ...

b. supporting documentation for the specific condition(s) identified. Acceptable documentation must include:

i. ...

ii. the home health care plans, or other medical provider documentation documenting the diagnosis, treatments and conditions within the designated time frames; or

iii. ...

H. Skilled Rehabilitation Therapies Pathway

1. 2.b. ...

3. Supporting documentation of the therapy received/scheduled during the look-back/look-forward period is required and must include:

a. ...

b. the home health care plan, or other medical provider documentation notes indicating the received/scheduled therapy;

H.3.c. - J.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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:342 (January 2011), amended LR 39:1471 (June 2013), LR 41:1289 (July 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:2187 (November 2017), LR 44:1019 (June 2018), LR 48:

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 Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on June 29, 2022.

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 June 9, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on June 29, 2022 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 June 9, 2022. 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. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner

from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary