

## **Chapter 50. Home and Community-Based Services Providers Licensing Standards**

### **Subchapter A. General Provisions**

#### **§5001. Introduction**

A. Pursuant to R.S. 40:2120.2, the Department of Health and Hospitals hereby establishes the minimum licensing standards for home and community-based services (HCBS) providers. These licensing provisions contain the core requirements for HCBS providers as well as the module-specific requirements, depending upon the services rendered by the HCBS provider. These regulations are separate and apart from Medicaid standards of participation or any other requirements established by the Medicaid Program for reimbursement purposes.

B. Any person or entity applying for an HCBS provider license or who is operating as a provider of home and community-based services shall meet all of the core licensing requirements contained in this Chapter, as well as the module-specific requirements, unless otherwise specifically noted within these provisions.

C. Providers of the following services shall be licensed under the HCBS license:

1. adult day care (ADC);
2. family support;
3. personal care attendant (PCA);
4. respite;
5. substitute family care (SFC);
6. supervised independent living (SIL), including the shared living conversion services in a waiver home; and
7. supported employment.

D. The following entities shall be exempt from the licensure requirements for HCBS providers:

1. any person, agency, institution, society, corporation, or group that solely:
  - a. prepares and delivers meals;
  - b. provides sitter services; and/or
  - c. provides housekeeping services;
2. any person, agency, institution, society, corporation, or group that provides gratuitous home and community-based services;
3. any individual licensed practical nurse (LPN) or registered nurse (RN) who has a current Louisiana license in good standing;
4. staffing agencies that supply contract workers to a health care provider licensed by the department;
5. any person who is employed as part of a departmentally authorized self-direction program; and
  - a. For purposes of these provisions, a self-direction program shall be defined as a service delivery option based upon the principle of self-determination. The program enables participants and/or their authorized representative(s) to become the employer of the people they choose to hire to provide supports to them.
6. any individual direct service worker providing respite services pursuant to a contract with the Statewide Management Organization (SMO) in the Louisiana Behavioral Health Partnership.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.2.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:63 (January 2012), amended LR 38:1410 (June 2012), LR 40:1007 (May 2014).

### §5003. Definitions

*Accredited*—the process of review and acceptance by an accreditation body such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or Council on Accreditation (COA).

*Activities of Daily Living*—the functions or tasks which are performed either independently or with supervision that assist an individual to live in a community setting, or that provide assistance for mobility (i.e., bathing, dressing, eating, grooming, walking, transferring and toileting).

*Adult Day Care Services*—structured and comprehensive services provided in a group setting that are designed to meet the individual needs of adults with functional impairments. This program provides a variety of health, social and related support services in a protective setting for a portion of a 24-hour day.

*Branch*—an office from which in-home services such as personal care attendant (PCA), supervised independent living (SIL) and respite are provided within the same DHH region served by the parent agency. The branch office shares administration and supervision.

*Client*—an individual who is receiving services from a home and community-based service provider.

*Department*—the Louisiana Department of Health and Hospitals (DHH) or any of its sections, bureaus, offices or its contracted designee.

*DHH Region*—the geographical administrative regions designated by the Department of Health and Hospitals.

*Developmental Disability*—a severe, chronic condition as defined in the Developmental Disabilities Law of 2005, R.S. 28:451.1-455.2.

*Family Support Services*—advocacy services, family counseling, including genetic counseling, family subsidy programs, parent-to-parent outreach, legal assistance, income maintenance, parent training, homemaker services, minor home renovations, marriage and family education, and other related programs.

*Geographical Location*—the DHH region in which the primary business location of the provider agency operates from.

*Health Standards Section*—the licensing and certification section of the Department of Health and Hospitals.

*Home and Community-Based Service Provider*—an agency, institution, society, corporation, person(s) or any other group licensed by the department to provide one or more home and community-based services as defined in R.S. 40:2120.2 or these licensing provisions.

*Incident*—a death, serious illness, allegation of abuse, neglect or exploitation or an event involving law enforcement or behavioral event which causes serious injury to the client or others.

*Individual Service Plan*—a service plan developed for each client that is based on a comprehensive assessment which identifies the individual's strengths and needs in order to establish goals and objectives so that outcomes to service delivery can be measured.

*Instrumental Activities of Daily Living*—the functions or tasks that are not necessary for fundamental functioning but

assist an individual to be able to live in a community setting. These are activities such as light house-keeping, food preparation and storage, grocery shopping, laundry, reminders to take medication, scheduling medical appointments, arranging transportation to medical appointments and accompanying the client to medical appointments.

*Personal Care Attendant Services*—services required for a person with a disability to become physically independent to maintain physical function or to remain in, or return to, the community.

*Respite Care*—an intermittent service designed to provide temporary relief to unpaid, informal caregivers of the elderly and/or people with disabilities.

*Satellite*—an alternate location from which center-based respite or adult day care services are provided within the same DHH region served by the parent agency. The branch office shares administration and supervision.

*Service Area*—the DHH administrative region in which the provider's geographic business location is located and for which the license is issued.

*Sitter Services*—

1. services provided by a person who:
  - a. spends time with an individual;
  - b. accompanies such individual on trips and outings;
  - c. prepares and delivers meals to such individual; or
  - d. provides housekeeping services.
2. Any person who provides sitter services shall not provide hands-on personal care attendant service with respect to ADLs to the individual.

*Sub-License*—any satellite or branch office operating at a different physical geographic address.

*Substitute Family Care Caregiver*—a single or dual parent family living in a home setting which has been certified through a home study assessment as adequate and appropriate to provide care to the client by the SFC provider. At least one family member will be designated as a principal SFC caregiver.

*Substitute Family Care Services*—provide 24-hour personal care, supportive services and supervision to adults who meet the criteria for having a developmental disability.

*Supervised Independent Living via a Shared Living Conversion Model*—a home and community-based shared living model for up to six persons, chosen by clients of the Residential Options Waiver (ROW), or any successor waiver, as their living option.

*Supervised Independent Living Services*—necessary training, social skills and medical services to enable a person who has mental illness or a developmental disability, and who is living in congregate, individual homes or individual apartments, to live as independently as possible in the community.

*Supported Employment*—a system of supports for people with disabilities in regards to ongoing employment in integrated settings. Supported employment can provide assistance in a variety of areas including:

1. job development;
2. job coaches;
3. job retention;
4. transportation;
5. assistive technology;
6. specialized job training; and
7. individually tailored supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:64 (January 2012), amended LR 40:1007 (May 2014).

### §5005. Licensure Requirements

A. All HCBS providers shall be licensed by the Department of Health and Hospitals. It shall be unlawful to operate as a home and community-based service provider without a license issued by the department. DHH is the only licensing authority for HCBS providers in Louisiana.

B. An HCBS license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the HCBS provider to which it is issued and only for the specific geographic address of that provider, including any sub-license;
3. designate which home and community-based services the provider can provide;
4. enable the provider to render delineated home and community-based services within a DHH region;
5. be valid for one year from the date of issuance, unless revoked, suspended, modified or terminated prior to that date, or unless a provisional license is issued;
6. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the HCBS provider;
7. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and
8. be posted in a conspicuous place on the licensed premises at all times.

C. An HCBS provider shall provide only those home and community-based services or modules specified on its license and only to clients residing in the provider's designated service area, DHH Region or at the provider's licensed location.

D. An HCBS provider may apply for a waiver from the Health Standards Section (HSS) to provide services to a

client residing outside of the provider's designated service area or DHH Region only under the following condition:

1. A waiver may be granted by the department if there is no other HCBS provider in the client's service area or DHH Region that is licensed and that has the capacity to provide the required services to the client, or for other good cause shown by the HCBS provider and client.

2. The provider must submit a written waiver request to HSS prior to providing services to the client residing outside of the designated service area or DHH Region.

3. The written waiver request shall be specific to one client and shall include the reasons for which the waiver is requested.

E. In order for the HCBS provider to be considered operational and retain licensed status, the provider shall meet the following conditions.

1. Each HCBS provider shall have a business location which shall not be located in an occupied personal residence and shall conform to the provisions of §5027 of this Chapter.

a. The business location shall be part of the licensed location of the HCBS provider and shall be in the DHH Region for which the license is issued.

b. The business location shall have at least one employee on duty at the business location during stated hours of operation.

c. An HCBS provider which provides ADC services or out of home (center-based) respite care services may have the business location at the ADC building or center-based respite building.

2. Adult day care facilities shall have clearly defined days and hours of operation posted. The ADC must be open at least five hours on days of operation. Center-based respite facilities shall have the capacity to provide 24 hour services.

3. There shall be adequate direct care staff and professional services staff employed and available to be assigned to provide services to persons in their homes as per the plan of care. ADC services and center-based respite services should be adequately staffed during the facility's hours of operation.

4. Each HCBS provider shall have at least one published business telephone number. Calls shall be returned within one business day.

F. The licensed HCBS provider shall abide by and adhere to any state law, rule, policy, procedure, manual or memorandum pertaining to HCBS providers.

G. A separately licensed HCBS provider shall not use a name which is substantially the same as the name of another HCBS provider licensed by the department. An HCBS provider shall not use a name which is likely to mislead the client or family into believing it is owned, endorsed or operated by the State of Louisiana.

H. Upon promulgation of the final Rule governing these provisions, existing providers of the following home and

community-based services shall be required to apply for an HCBS provider license at the time of renewal of their current license(s):

1. adult day care;
2. family support;
3. personal care attendant;
4. respite;
5. supervised independent living; and
6. supported employment.

I. If an existing provider currently has multiple licenses, such as PCA, respite and SIL, the provider shall be required to apply for an HCBS provider license at the time the first such license is due for renewal. The HCBS provider license shall include all modules for which the provider is currently licensed, and will replace all of the separate licenses.

J. If applicable, each HCBS provider shall obtain facility need review approval prior to licensing.

1. An existing licensed PCA, respite or SIL provider who is applying for an HCBS provider license at the time of license renewal shall not be required to apply for facility need review approval. However, if an existing licensed provider, who is not currently providing PCA, respite or SIL services wants to begin providing these services, the provider shall be required to apply for facility need review approval for each of the requested services.

EXAMPLE: A currently licensed PCA provider with no Respite license is now applying for his HCBS provider license and wants to add the respite module. The PCA provider shall be required to apply for facility need review approval for the respite module.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:65 (January 2012).

#### **§5007. Initial Licensure Application Process**

A. An initial application for licensing as an HCBS provider shall be obtained from the department. A completed initial license application packet for an HCBS provider shall be submitted to and approved by the department prior to an applicant providing HCBS services.

B. The initial licensing application packet shall include:

1. a completed HCBS licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural facility plans for the adult day care module and the center-based respite module from the Office of the State Fire Marshal and any other office/entity designated by the department to review and approve the facility's architectural plans;

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal, if applicable;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health for the adult day care module and the center-based respite module;

5. a copy of a statewide criminal background check, including sex offender registry status, on all owners and administrators;

6. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

7. a completed disclosure of ownership and control information form;

8. the days and hours of operation;

9. an organizational chart and names, including position titles, of key administrative personnel and governing body; and

10. any other documentation or information required by the department for licensure.

C. Any person convicted of one of the following felonies is prohibited from being the owner or the administrator of an HCBS provider agency. For purposes of these provisions, the licensing application shall be rejected by the department for any felony conviction relating to:

1. the violence, abuse, or negligence of a person;

2. the misappropriation of property belonging to another person;

3. cruelty, exploitation or the sexual battery of the infirmed;

4. a drug offense;

5. crimes of a sexual nature;

6. a firearm or deadly weapon;

7. Medicare or Medicaid fraud; or

8. fraud or misappropriation of federal or state funds.

D. If the initial licensing packet is incomplete, the applicant shall be notified of the missing information and shall have 90 days from receipt of the notification to submit the additional requested information.

1. If the additional requested information is not submitted to the department within 90 days, the application shall be closed.

2. If an initial licensing application is closed, an applicant who is still interested in becoming an HCBS provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process, subject to any facility need review approval.

E. Applicants for HCBS licensure shall be required to attend a mandatory training class when a completed initial licensing application packet has been received by the department.

F. Upon completion of the mandatory training class and written notification of satisfactory class completion from the department, an HCBS applicant shall be required to admit one client and contact the HSS field office to schedule an initial licensing survey.

1. Prior to scheduling the initial survey, applicants must be:

a. fully operational;

b. in compliance with all licensing standards; and

c. providing care to only one client at the time of the initial survey.

2. If the applicant has not admitted one client or called the field office to schedule a survey within 30 days of receipt of the written notification from the department, the application will be closed. If an applicant is still interested in becoming an HCBS provider, a new initial licensing packet with a new initial licensing fee must be submitted to the department to start the initial licensing process, subject to any facility need review approval.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the HCBS provider will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:66 (January 2012).

5. assurance that the contractor meets the same requirements as those for the provider's staff, such as staff qualifications, functions, evaluations, orientation and in-service training;

a. the provider shall be responsible for assuring the contractor's compliance with all personnel and agency policies required for HCBS providers during the contractual period;

6. assurance that the contractor completes the clinical record in the same timely manner as required by the staff of the provider;

7. payment of fees and terms; and

8. assurance that reporting requirements are met.

C. The provider and contractor shall document review of their contract on an annual basis.

D. The provider shall coordinate services with contract personnel to assure continuity of client care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:77 (January 2012).

#### **§5043. Contract Services**

A. A provider may enter into contracts or other agreements with other companies or individuals to provide services to a client. The provider is still responsible for the management of the client's care and for all services provided to the client by the contractor or its personnel.

B. When services are provided through contract, a written contract must be established. The contract shall include all of the following items:

1. designation of the services that are being arranged for by contract;

2. specification of the period of time that the contract is to be in effect;

3. a statement that the services provided to the client are in accordance with the individual service plan;

4. a statement that the services are being provided within the scope and limitations set forth in the individual service plan and may not be altered in type, scope or duration by the contractor;

## **Subchapter F. Provider Responsibilities**

### **§5055. Core Staffing Requirements**

A. Administrative Staff. The following administrative staff is required for all HCBS providers:

1. a qualified administrator at each licensed geographic location who shall meet the qualifications as established in these provisions; and
2. other administrative staff as necessary to properly safeguard the health, safety and welfare of the clients receiving services.

#### **B. Administrator Qualifications**

1. The administrator shall be a resident of the state of Louisiana and shall have a high school diploma or equivalent, and shall meet the following requirements:

- a. have a bachelor's degree, plus a minimum of four years of verifiable experience working in a field providing services to the elderly and/or persons with developmental disabilities; or

b. have a minimum of six years of verifiable experience working in a health or social service related business, plus a minimum of four additional years of verifiable experience working in a field providing services to the elderly and/or persons with developmental disabilities.

2. Any person convicted of a felony as defined in these provisions is prohibited from serving as the administrator of an HCBS provider agency.

C. Administrator Responsibilities. The administrator shall:

1. be a full time employee of the HCBS provider and shall not be a contract employee;

2. be available in person or by telecommunication at all times for all aspects of agency operation or designate in writing an individual to assume the authority and control of the agency if the administrator is temporarily unavailable;

3. direct the operations of the agency;

4. be responsible for compliance with all regulations, laws, policies and procedures applicable to home and community-based service providers;

5. employ qualified individuals and ensure adequate staff education and evaluations;

6. ensure the accuracy of public information and materials;

7. act as liaison between staff, contract personnel and the governing body;

8. implement an ongoing, accurate and effective budgeting and accounting system;

9. ensure that all staff receive proper orientation and training on policies and procedures, client care and services and documentation, as required by law or as necessary to fulfill each staff person's responsibilities;

10. assure that services are delivered according to the client's individual service plan; and

11. not serve as administrator for more than one licensed HCBS provider.

#### D. Professional Services Staff

1. The provider shall employ, contract with or assure access to all necessary professional staff to meet the needs of each client as identified and addressed in the client's ISP. The professional staff may include, but not be limited to:

- a. licensed practical nurses;
- b. registered nurses;
- c. speech therapists;
- d. physical therapists;
- e. occupational therapists;
- f. social workers; and
- g. psychologists.

2. Professional staff employed or contracted by the provider shall hold a current, valid license issued by the appropriate licensing board and shall comply with continuing education requirements of the appropriate board.

3. The provider shall maintain proof of annual verification of current license of all professional staff.

4. All professional services furnished or provided shall be provided in accordance with acceptable professional practice standards, according to the scope of practice requirements for each licensed discipline.

#### E. Direct Care Staff

1. The provider shall be staffed with direct care staff to properly safeguard the health, safety and welfare of clients.

2. The provider shall employ direct care staff to ensure the provision of home and community-based services as required by the ISP.

3. The HCBS provider shall ensure that each client who receives HCBS services has a written individualized back-up staffing plan and agreement for use in the event that the assigned direct care staff is unable to provide support due to unplanned circumstances, including emergencies which arise during a shift. A copy of the individualized plan and agreement shall be provided to the client and/or the client's legally responsible party, and if applicable, to the support coordinator, within five working days of the provider accepting the client.

#### F. Direct Care Staff Qualifications

1. All providers who receive state or federal funds, and compensate their direct service workers with such funds, shall ensure that all non-licensed direct care staff meet the minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-40:2179.1 or a subsequently amended statute and any rules published pursuant to those statutes.

2. All direct care staff shall have the ability to read, write and carry out directions competently as assigned.

a. The training must address areas of weakness, as determined by the worker's performance reviews, and may address the special needs of clients.

3. All direct care staff shall be trained in recognizing and responding to the medical emergencies of clients.

G. Direct Care Staff Responsibilities. The direct care staff shall:

1. provide personal care services to the client, per the ISP;

2. provide the direct care services to the client at the time and place assigned;

3. report and communicate changes in a client's condition to a supervisor immediately upon discovery of the change;



4. report and communicate a client's request for services or change in services to a supervisor within 24 hours of the next business day of such request;

5. follow emergency medical training while attending the client;

6. subsequently report any medical or other types of emergencies to the supervisor, the provider or others, pursuant to the provider policies and procedures;

7. report any suspected abuse, neglect or exploitation of clients to a supervisor on the date of discovery, and as required by law;

8. be trained on daily documentation such as progress notes and progress reports; and

9. be responsible for daily documentation of services provided and status of clients to be reported on progress notes and/or progress reports.

#### H. Volunteers/Student Interns

1. A provider utilizing volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

- a. be directly supervised by a paid staff member;
- b. be oriented and trained in the philosophy, policy and procedures of the provider, confidentiality requirements and the needs of clients; and
- c. have documentation of three reference checks.

2. Volunteer/student interns shall be a supplement to staff employed by the provider but shall not provide direct care services to clients.

I. Direct Care Staff Supervisor. The HCBS provider shall designate and assign a direct care staff supervisor to monitor and supervise the direct care staff.

1. The supervisor shall be selected based upon the needs of the client outlined in the ISP.

2. A provider may have more than one direct care staff supervisor.

3. Staff in supervisor positions shall have annual training in supervisory and management techniques.

#### J. Direct Care Supervision

1. A direct care staff supervisor shall make an in-person supervisory visit of each direct care staff within 60 days of hire and at least annually thereafter. Supervisory visits shall occur more frequently:

- a. if dictated by the ISP;
- b. as needed to address worker performance;
- c. to address a client's change in status; or
- d. to assure services are provided in accordance with the ISP.

2. The supervisory visit shall be unannounced and utilized to evaluate:

- a. the direct care staff's ability to perform assigned duties;
- b. whether services are being provided in accordance with the ISP; and
- c. if goals are being met.

3. Documentation of supervision shall include:

- a. the worker/client relationship;
- b. services provided;
- c. observations of the worker performing assigned duties;
- d. instructions and comments given to the worker during the onsite visit; and
- e. client satisfaction with service delivery.

4. An annual performance evaluation for each direct care staff person shall be documented in his/her personnel record.

5. In addition to the in-person supervisory visits conducted with direct care staff, the provider shall visit the home of each client on a quarterly basis to determine whether the individual:

- a. service plan is adequate;
- b. continues to need the services; and
- c. service plan needs revision.

#### K. Direct Care Staff Training

1. The provider shall ensure that each direct care staff satisfactorily completes a minimum of 16 hours of training upon hire and before providing direct care and services to clients. Such training shall include the following topics and shall be documented, maintained and readily available in the agency's records:

- a. the provider's policies and procedures;
- b. emergency and safety procedures;
- c. recognizing and responding to medical emergencies that require an immediate call to 911;
- d. client's rights;
- e. detecting and reporting suspected abuse and neglect, utilizing the department's approved training curriculum;
- f. reporting critical incidents;
- g. universal precautions;
- h. documentation;
- i. implementing service plans;
- j. confidentiality;

k. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

l. basic skills required to meet the health needs and problems of the client; and

m. the management of aggressive behavior, including acceptable and prohibited responses.

2. The provider shall ensure that each direct care staff satisfactorily completes a basic first aid course within 45 days of hire.

#### L. Competency Evaluation

1. A competency evaluation must be developed and conducted to ensure that each direct care staff, at a minimum, is able to demonstrate competencies in the training areas in §5055.K.

2. Written or oral examinations shall be provided.

3. The examination shall reflect the content and emphasis of the training curriculum components in §5055.K and shall be developed in accordance with accepted educational principles.

4. A substitute examination, including an oral component, will be developed for those direct care staff with limited literacy skills. This examination shall contain all of the content that is included in the written examination and shall also include a written reading comprehension component that will determine competency to read job-related information.

#### M. Continuing Education

1. Annually thereafter, the provider shall ensure that each direct care staff person satisfactorily completes a minimum of 16 hours of continuing training in order to ensure continuing competence. Orientation and normal supervision shall not be considered for meeting this requirement. This training shall address the special needs of clients and may address areas of employee weakness as determined by the direct care staff's performance reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:79 (January 2012), amended LR 40:1007 (May 2014).