



State of Louisiana
Louisiana Department of Health
Office of the Secretary

July 8, 2019

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr. Chairman, Senate Health & Welfare Committee
The Honorable Frank A. Hoffmann, Chairman, House Health & Welfare Committee

From: Rebekah E. Gee, MD, MPH
Secretary *Cindy River*

Re: Second Report on Proposed Amendments to LAC 50:XXI.Chapter 9 – Home and Community-Based Services Waivers Provider Requirements

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Office of Aging and Adult Services, submits its second report regarding the proposed Home and Community-Based Services Waivers – Provider Requirements rule amendment. A Notice of Intent on the proposed amendments was published in the May 20, 2019 issue of the *Louisiana Register* (LR 45:721). No written comments or requests for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the May 20, 2019, Notice of Intent when it is published as a final rule in the August 20, 2019, issue of the *Louisiana Register*.

Should you have any questions or need additional information, please contact Jen Katzman, Deputy Medicaid Director, at jennifer.katzman@la.gov.

Cc: Jen Katzman, Deputy Medicaid Director
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers
Mary Norris, Medicaid Waivers and Supports Project Manager 3
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Home and Community-Based Services Waivers
Provider Requirements
(LAC 50:XXI.Chapter 9)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.901 and §903 and to adopt §904 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 general provisions governing home and community-based services (HCBS) waivers in order to require HCBS providers to verify employee Social Security numbers, and to clarify and ensure that these provisions are appropriately promulgated in the *Louisiana Administrative Code*.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

**Part XXI. Home and Community-Based Services Waivers
Subpart 1. General Provisions**

Chapter 9. Provider Requirements

Subchapter A. General Provisions

§901. Settings Requirements for Service Delivery

A. - A.5. ...

B. In a provider-owned or controlled non-residential setting, in addition to the qualities listed in Subsection A above, the following additional conditions must be met:

1. - 3. ...

C. In a provider-owned or controlled residential setting, in addition to the qualities listed in Subsections A and B above, the following additional conditions must be met.

1. The unit or dwelling shall be a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant ~~law~~ laws of the state, ~~county~~ parish, city, or other designated entity. For settings in which ~~landlord~~ ~~tenant~~ landlord/tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's ~~landlord-tenant~~ landlord/tenant law.

C.2. - D. ...

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, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1978 (October 2017), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 45:

§903. Electronic Visit Verification

A. An electronic visit verification (EVV) system must be used for ~~automated scheduling,~~ time and attendance tracking and ~~billing~~post-authorization for home and community-based services.

1. - 2.b. ...

3. Requirements for proper use of the EVV system are outlined in the respective program's Medicaid provider manual.

~~All providers of home and community-based waivers shall comply with the respective program's Medicaid provider manual.~~

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, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1979 (October 2017), amended

by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 45:

§904. Social Security Verification

A. Home and community-based waiver providers shall verify all currently employed and all new employees' Social Security numbers either by obtaining a copy of the employee's Social Security card or through a Social Security number verification service.

B. A copy of the employee's Social Security card or proof of verification shall be kept in the employee's record.

1. The department or its designee reserves the right to request verification of an employee's Social Security number at any time.

2. Should the provider be unable to provide proof of verification, payments associated with that employee's previously billed time may be recouped and/or future reimbursement withheld until proper verification is submitted.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 45:

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele 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, 2019.

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, 2019. 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 27, 2019 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 Stanley Bordelon at (225) 219-3454 after June 9, 2019. 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.

Rebekah E. Gee MD, MPH

Secretary