

12. diet;
13. functional status;
14. rehabilitation potential;
15. the prognosis;
16. durable medical equipment available and/or needed;
17. when applicable, a copy of the transfer form that was forwarded to the appropriate health care facility that will be assuming responsibility for the patient's care; and
18. the discharge summary which shall be available to physicians upon request.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.31-40.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:57 (January 1992), amended LR 21:177 (February 1995), amended LR 22:1135 (November 1996), LR 27:2252 (December 2001).

### §9131. Continuous Quality Improvement

A. The agency shall have written policies requiring that an overall evaluation of the agency's total program be conducted at least once a year by a group of professional personnel (or a committee of this group), agency staff, and consumers or by a independent group of professionals outside the agency working in conjunction with consumers. The evaluation shall consist of an overall policy and administrative review and a clinical record review. The evaluation shall assess the extent to which the agency's program is appropriate, adequate, effective, and efficient. The results of the evaluation must be reported to and acted upon by those persons who are responsible for the operation of the agency. The evaluation results shall be maintained separately as administrative records.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2009.31-40.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:57 (January 1992), amended LR 21:177 (February 1995), LR 27:2253 (December 2001).

## Chapter 92. Direct Service Worker Registry

### Subchapter A. General Provisions

#### §9201. Definitions

*Able to Self-Direct the Services*—a person's ability to make decisions about his or her own care and actively participate in the planning and directing of that care.

*Abuse*—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
  - a. sexual abuse;
  - b. exploitation; or

c. extortion of funds or other things of value to such an extent that the health, moral or emotional well-being of the individual being supported is endangered; or

3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

*Activities of Daily Living (ADLs)*—the functions or tasks which are performed by an individual in a typical day, either independently or with supervision/assistance. Activities of daily living may include, but are not limited to, bathing, dressing, eating, grooming, walking, transferring and toileting.

*Assistance with Activities of Daily Living*—such assistance may be the actual performance of the task for the individual, or may provide hands-on assistance with the performance of the tasks, or may include supervision and prompting to allow the individual to self-perform such tasks.

*Board*—the Louisiana State Board of Nursing.

*Daily Monitoring*—activities pursued on a daily basis by a family member, direct service worker and/or other health care providers for the purposes of collecting critical information needed to assure the individual's welfare. Monitoring activities may include, but are not limited to face-to-face home visits with the person receiving assistance or services and/or daily telephone calls with the individual or communication by other electronic means.

*DAL*—Division of Administrative Law or its successor.

*Department*—the Louisiana Department of Health (LDH).

*Direct Service Worker (DSW)*—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person. Functions performed may include, but are not limited to, assistance and training in activities of daily living, personal care services, and job-related supports. Examples of direct service workers employed or contracted in a licensed and/or certified health care setting include, but are not limited to:

1. patient care technicians;
2. hospital aides;
3. unlicensed assistive personnel (UAPs);
4. home health aides;
5. hospice aides;
6. direct care workers;
7. mental health technicians;
8. mental health aides;
9. mental health orderlies;

10. nursing aides or hospital orderlies;
11. nursing assistants;
12. patient care aides; and/or
13. any persons hired as unlicensed direct care staff that meet the provisions of this Chapter.

NOTE: Those persons who are listed on the Certified Nurse Aide Registry and who are employed as certified nurse aides in a licensed and/or certified nursing facility and/or a skilled nursing facility within a hospital are not included under these provisions as a direct service worker.

*Direct Service Worker Registry*—the negative database, maintained by the department, or its designee, of unlicensed persons who have a finding placed against them of abuse, neglect, misappropriation, exploitation, or extortion while employed as a DSW at a licensed health care facility or entity who are ineligible to be employed, or have continued employment, as a direct service worker.

*Disability*—a physical or mental impairment which substantially limits one or more of the major life activities of an individual or who has a history of such impairment or who is regarded as having such impairment; having a condition (such as an illness or an injury) that damages or limits a person's physical or mental abilities, either temporarily or on a permanent basis.

*Elderly*—any adult over 75 years old or individuals over 65 years old who have functional impairments.

*Employed*—performance of a job or task for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is directly hired for an on staff position.

*Employer*—an individual or entity that pays an individual wages or a salary for performing a job.

*Exploitation*—the illegal or improper use or management of the funds, assets or property of an adult with disabilities or who is elderly, or the use of the power-of-attorney or guardianship of an adult with disabilities or who is elderly for one's own profit or advantage.

*Extortion*—the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation or abuse of legal or official authority.

*Finding*—allegations of abuse, neglect, misappropriation, exploitation or extortion that are placed against the DSW on the registry by the department for the following reasons:

1. after a final decision by an administrative law judge or a court of law, after all appeal delays afforded by law are exhausted; or
2. failure by the accused to timely request an appeal in accordance with the provisions of this Rule.

*Health Care Provider*—any health care facility, agency, or entity licensed and/or certified by LDH. Such entities may be referred to in other laws, statutes and regulations as providers, agencies, clinics, residential care units, homes or facilities. Health care providers include, but are not limited to, the following:

1. nursing facilities;
2. hospice providers;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers;
7. home health agencies;
8. behavioral health providers;
9. dialysis units; or
10. home and community based services providers.

*Health Standards Section (HSS)*—the section of the Department of Health responsible for the licensing and/or certification of health care providers.

*Home and Community-Based Services*—those services as defined in R.S. 40:2120.2 or a successor statute. For the purposes of this Rule, home and community-based services do not include services provided in day or residential congregate care settings including, but not limited to, the following:

1. nursing facilities;
2. hospice care facilities;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers; or
7. any other 24-hour facility licensed by the department, Department of Education or the Department of Children and Family Services, exclusive of center-based respite facilities.

*Major Life Activities*—functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

*Mental Abuse*—emotional or mental abuse may involve any activity that is designed to blame, shame, humiliate, or intimidate an individual and includes, but is not limited to abuse that is facilitated or caused by taking or using photographs or recordings in any manner that would demean or humiliate a client using any type of equipment (e.g., cameras, smart phones, and other electronic devices) and/or keeping or distributing them through multimedia messages or on social media sites.

1. Mental abuse may occur through either verbal or nonverbal conduct which causes or has the potential to cause the client to experience humiliation, intimidation, fear, shame, agitation, or degradation, regardless of whether the client provided consent and regardless of the client's cognitive status. This may include, but is not limited to:

- a. photographs and recordings of clients that contain nudity;

- b. sexual and intimate relations;
- c. bathing, showering or toileting;
- d. providing perineal care, such as after an incontinence episode;
- e. agitating a client to solicit a response;
- f. derogatory statements directed to the client;
- g. showing a body part of the client without the client's face, whether it is the chest, limbs or back;
- h. labeling a client's pictures and/or providing comments in a demeaning manner;
- i. directing a client to use inappropriate language; and/or
- j. showing a client in a compromised position.

*Misappropriation*—taking possession without the permission of the individual who owns the personal belongings or the deliberate misplacement, exploitation or wrongful temporary or permanent use of an individual's belongings or money without the individual's consent.

*Neglect*—the failure by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his/her well-being, unless the resident exercises his/her right to refuse the necessary care.

*Noncomplex Task*—a health-related task with predictable results that can be safely performed according to exact directions with no need to alter the standard procedure.

*Person-Specific Training*—a set of knowledge, skills, training and abilities that address the client's strengths, restrictions relative to aging, disabilities, health care needs and related factors in order to meet the unique needs of the person receiving care.

*Plan of Care*—a plan that describes the assistance or services required to be provided to a person receiving home and community-based services, as defined herein. The plan also describes who shall provide the assistance and the frequency and/or duration of the services that shall be provided.

*Provider*—

1. an entity that furnishes care and services to consumers and has been licensed and/or certified by the department to operate in the state;
2. in the case of an authorized departmental self-directed program, provider shall be the entity or individual as specified by the program employing or contracting the direct service worker.

*Registered Nurse*—any individual possessing a valid, active and unencumbered Louisiana license to practice nursing as a registered nurse (RN).

*Stable and Predictable*—a situation in which the person's clinical and behavioral status is determined by a licensed RN to be non-fluctuating and consistent. A stable and predictable condition involves long term health care needs which are

recuperative in nature and do not require the regular scheduled presence of a RN or licensed practical nurse (LPN).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2179-2179.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3175 (December 2012), LR 42:893 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:662 (May 2019).

## §9202. Introduction

A. The Department of Health (LDH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, misappropriation, exploitation or extortion have been substantiated by the department, an administrative law judge, or a court of law.

B. The Direct Service Worker Registry will contain the following items on each individual for whom a finding has been placed:

1. name;
2. address;
3. Social Security number;
4. an accurate summary of finding(s); and
5. information relative to registry status which will be available through procedures established by the Health Standards Section (HSS).

C. Licensed and/or certified health care providers shall access the registry to determine if there is a finding that a prospective hire, or currently employed or contracted DSW, has been determined to have committed exploitation, extortion, abuse or neglect of an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired as a DSW nor shall a current employee have continued employment as a DSW with the licensed and/or certified health care provider.

1. Access to the registry shall be limited to an inquiry for a specific DSW.

D. All provisions of this Chapter, except Subchapter D, §§9241-9261, Medication Administration and Noncomplex Tasks in Home and Community-Based Settings, applies to any licensed and/or certified health care provider who employs or contracts direct service workers who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the person.

1. Exception. Home and community-based services providers are required to meet all provisions of this Chapter, inclusive of Subchapter D, §§9241-9261, if the HCBS provider employs or contracts direct service workers who perform medication administration and noncomplex medical tasks in the HCBS setting.

E. The provisions of this Chapter shall apply to DSWs who are compensated, either by direct employment or through contract, regardless of the setting, and specifically do not apply to those DSWs listed on the Certified Nurse Aide Registry established under rules promulgated by the LDH.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2179-2179.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:894 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:663 (May 2019).

## **Subchapter B. Reserved.**

## **Subchapter C. Provider Participation**

### **§9231. Health Care Provider Responsibilities**

A. Prior to hiring any DSW or trainee, the licensed and/or certified health care provider shall:

1. ensure that the individual is at least 18 years of age;
2. document that the individual is able to read, write and comprehend the English language; and
3. access the registry in accordance with the provisions of §9202.C-C.1.

B. The health care provider shall have a written policy/process to check the DSW registry on the department's designated database at least every six months to determine if any currently employed or contracted DSW or trainee has been placed on the registry with a finding that he/she has been determined to have committed abuse or neglect of an individual being supported or misappropriated the individual's property or funds or committed exploitation or extortion of an individual being supported.

1. The provider shall follow the agency's process in demonstration of compliance with this procedure.

2. If there is such a finding on the registry, the employee shall not have continued employment as a DSW with the licensed and/or certified health care provider in accordance with the provisions of §9202.C.

**NOTE:** The DSW registry is maintained on the department's designated database which may also contain other exclusionary information on a DSW. The provider's responsibility to access the database shall also be conducted in accordance with other departmental rules and regulations, as applicable.

D. **Criminal History.** In accordance with RS 40:1203.1-5 et seq., the provider shall have a written policy and process to request in writing a security check and the criminal history of an employee, either contracted or directly employed, conducted by the Louisiana State Police or authorized agency, upon offer of employment or contract.

1. An employer may make an offer of temporary employment to a non-licensed person pending the results of

the criminal history and security check on the person. In such instances, the employer shall provide to the Louisiana State Police, or authorized agency, the name and relevant information relating to the person within 72 hours after the date the person accepts temporary employment.

2. The security check shall consist of the use of personal identifiers, such as name, social security number, date of birth, and driver's license number, to search the national sex offender public registry. The provider shall obtain from the Louisiana State Police or the authorized agency the results of the security check to verify if an applicant is listed in the national sex offender public registry.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2179-2179.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012), LR 42:894 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:663 (May 2019).

## **Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings**

### **§9241. General Provisions**

A. Unless authorized to provide medication administration or non-complex tasks by another state law or regulation, all direct service workers providing medication administration or non-complex tasks shall comply with the provisions of Subchapter D of this Rule.

B. In order to perform any of the authorized procedures specified in this Subchapter, the direct service worker shall not have a finding placed against him/her on the DSW Registry. Any direct service worker who has had a finding placed against him/her on the Direct Service Worker Registry shall not perform any of the authorized procedures specified in this Subchapter.

C. The medication administration and non-complex tasks authorized by this Subchapter may be performed only in home and community-based settings by DSWs who meet the requirements of this Subchapter. The requirements of this Subchapter are in addition to the general training, competency, and provider requirements which generally govern direct service workers.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1031-1034.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012).

### **§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings**

A. A registered nurse shall authorize and monitor medication administration and noncomplex tasks performed

by the direct service workers. In order for the RN to authorize these tasks, the direct service worker shall:

1. be employed or contracted by an agency licensed and/or certified by the HSS or employed as part of an authorized departmental self-directed program; and
2. attend to an individual who:
  - a. is receiving home and community-based services;
  - b. is able to self-direct the services or resides in a residence where there is daily monitoring by a family member or other health care provider;
  - c. has an approved current plan of care; and
  - d. receives periodic assessment by a RN based on the person's health status and specified within the plan of care; in no case shall the periodic assessment be less than annually. A comprehensive assessment performed for a client in accordance with policies and procedures established by Medicaid or by a LDH program office may serve as the basis of the RN assessment but may not be used in lieu of the RN assessment.

B. A registered nurse may delegate to a licensed practical nurse components of the training and supervision of the DSW. The decision is based upon assessment of the individual task to be performed. The RN shall retain the responsibility and accountability for all acts of delegation and ensuring authorization and competency validation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012), amended LR 42:895 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:663 (May 2019).

**§9245. Training Requirements for the Performance of Medication Administration and Noncomplex Tasks in Home and Community-Based Settings**

A. Person-Specific Training. Direct service workers shall receive person-specific training from a RN who has assessed the health status of the person and who has determined that the direct service worker can competently perform the tasks in a safe, appropriate manner for this person.

1. The RN's determination of competency shall be certified by the RN in writing, and the written certification shall be maintained in the direct service worker's personnel file. The RN's determination of competency shall not be delegated.

2. This training shall be repeated if the RN does not certify that the direct service worker has demonstrated a sufficient level of competency in the subject matter.

3. Based on the nursing assessment and clinical judgment, the RN shall provide additional person-specific training when the person receiving care has a change in health status or physician orders and yet remains in a stable, predictable condition. The RN may make a determination based upon his/her assessment of the worker's competency

that training can be safely performed via telephone contact, other means of electronic communication, or face-to-face contact with the worker. Examples include, but are not limited to:

- a. changes in physician orders concerning health care tasks to be performed;
- b. changes in physician orders regarding routine medications; or
- c. new physician orders for short-term use of medication for a minor acute health condition.

B. Medication Administration Training. Direct service workers shall attain proficiency in the fundamentals of medication administration. Direct Service Staff shall receive 16 hours of medication administration training which has been coordinated and approved by an RN and which shall include the following.

1. Medication Administration Core Curriculum:
  - a. legal aspects of administering medication;
  - b. roles and responsibilities of medication administration;
  - c. medical terminology;
  - d. classification and identification of drugs;
  - e. measuring medications;
  - f. effects and side effects;
  - g. distribution and routes of medication;
  - h. drug interactions;
  - i. handling and storage of medicines;
  - j. six fundamental rights of administering medication:
    - i. give the right medication;
    - ii. give the right dose;
    - iii. give the medication to the right individual;
    - iv. give the medication by the right route;
    - v. give the medication at the right time; and
    - vi. provide the right documentation.
2. Documentation Training. Direct service workers shall attain proficiency in documentation which includes:
  - a. the contents of chart or record;
  - b. the importance of record keeping;
  - c. the rules for charting, including time limits;
  - d. documenting vital signs, as applicable;
  - e. documenting the condition of the person receiving care and significant changes; and
  - f. the name of medication, dose, route and time of administration.

3. Skill Proficiency Training. Direct service workers shall attain proficiency in the following skill areas, either by physical or verbal demonstration to the RN:

- a. universal precautions and infection control;
- b. vital signs, as applicable:
  - i. counting pulse;
  - ii. counting respirations;
  - iii. taking blood pressure; and
  - iv. taking oral, rectal, or axillary temperature.

C. A direct service worker who has not completed didactic training and demonstrated competency in accordance with guidelines established and approved by the Department of Health and the Louisiana Board of Nursing shall not be allowed to perform medication administration or any noncomplex tasks covered by this Rule.

D. Any direct service worker currently employed or contracted to perform the procedures authorized by this Chapter shall complete the training required by this Subchapter no later than 12 months after promulgation of this Rule.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1031-1034.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012), amended LR 42:895 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:664 (May 2019).

#### **§9247. Annual Competency Evaluation**

A. The direct service worker shall undergo an annual competency evaluation performed by a RN to determine whether he/she is competent to perform the authorized person-specific medication administration and noncomplex tasks safely and appropriately.

B. The RN shall use professional judgment in assessing whether or not the tasks are being performed correctly and safely by the DSW.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1031-1034.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012).

#### **§9249. Authorized Medication Administration and Noncomplex Tasks in Home and Community-Based Settings**

A. Direct service workers who meet the requirements of this Rule, including training and competency assessment, and who are so authorized may perform medication administration and non-complex tasks authorized by this Subchapter. Such a direct service worker may perform the following tasks for a person who is in stable condition only when the tasks may be performed according to exact directions, there is no need to alter the standard procedure, and the results are predictable:

1. administration of oral and topical medication, ointments, suppositories or a pre-measured dosage unit provided by the manufacturer of an oral inhalant aerosol, as ordered by an authorized prescriber;

a. any medication administered by a direct service worker under these provisions shall be in a container which meets acceptable pharmaceutical standards and is marked with:

- i. clear instructions;
- ii. the prescriber's name;
- iii. the prescription number, if any;
- iv. the name of the medication;
- v. the dosage;
- vi. the route;
- vii. the frequency; and
- viii. the time to be administered, if applicable;

2. provision of routine hydration, nutrition or medication by way of an established gastro-tube; and

3. other noncomplex tasks as identified by guidelines established and approved by the Department of Health and the Louisiana Board of Nursing.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1031-1034.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:664 (May 2019).

#### **§9251. Direct Service Worker Responsibilities**

A. The responsibilities of the direct service worker include, but are not limited to:

1. following the exact instructions of the RN in the performance of all authorized procedures;

2. notifying the employer or the RN when the health status of the person receiving assistance changes so the RN can reassess to determine whether or not the procedures can still be performed by the direct service worker in a safe manner;

3. notifying the employer or the registered nurse when the prescribed procedures or medications or dosages change so additional person-specific training can be conducted by the RN if applicable; and

4. notifying the employer, the RN, and the person receiving assistance or services if a finding has been placed against him/her on the Direct Service Worker Registry.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1031-1034.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012).

**§9253. Registered Nurse Responsibilities**

A. The responsibilities of the registered nurse include, but are not limited to:

1. assuring that during person-specific trainings and required evaluations, the direct service worker performs the authorized medication administration and non-complex tasks according to exact directions making certain there is no need to alter the standard procedures and the results are predictable;

2. assuring no direct service worker is authorized to perform medication administration and noncomplex tasks if the health status of the person receiving services is not stable and predictable;

3. assuring that the direct service worker demonstrates a sufficient level of competency in the subject matter as set forth in training;

4. assisting in the development of the plan of care for the person receiving assistance or services;

5. assisting the person's planning team to determine the frequency needed for RN assessments of the health status of the person receiving assistance or services;

6. at least annually, completing the competency evaluation of the direct service worker; and

7. completing and submitting the required documentation to the licensed and/or certified agency employing or contracting the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012), amended LR 42:895 (June 2016).

**§9255. Employer Responsibilities**

A. The responsibilities of the employer employing the direct service worker include, but are not limited to:

1. assuring that only direct service workers authorized under these provisions, or other provisions authorized through state laws or regulations, perform medication administration and noncomplex tasks;

2. assuring that the direct service worker performs the authorized procedures as trained by the RN and written in the plan of care;

3. maintaining all of the required documentation in the agency's permanent files;

4. assuring that the registered nurse assesses the health status of the person receiving assistance at least annually, or if required, more frequently as determined by the assessment of the RN and as specified in the plan of care;

5. assuring that the direct service worker received the required training and annual competency evaluation;

6. assuring that the direct service worker does not have a finding placed against him/her on the DSW Registry;

7. assuring that no direct service worker whose authorization has terminated continues to perform the procedures that had been previously authorized;

8. notifying the RN of any changes in the health status of the person receiving services or any concerns regarding the ability of the direct service worker to continue to perform the authorized procedures safely;

9. cooperating with the Health Standards Section during any monitoring of these provisions including, but not limited to:

a. providing access to required documentation; and

b. providing access to the direct service worker and supervisory staff; and

10. assisting the Health Standards Section with obtaining access to persons receiving assistance and their guardians.

B. The employer shall maintain the following documentation within its permanent files:

1. documentation by the RN to show that the person is able to self-direct the services or resides in a residence where there is daily monitoring by a family member, a direct service worker, or other health care provider;

2. a current plan of care for the person receiving services;

3. copies of the RN assessments of the person's health status;

4. documentation that the direct service worker does not have a finding placed against him/her on the DSW Registry;

5. documentation that the direct service worker has met the training requirements, including the additional person-specific training required when tasks or medications or dosages change, as determined by the RN;

6. documentation that the direct service worker has met the medication administration training requirements, including documentation that the RN conducting the training has assessed the proficiency and determined that the direct service worker exhibits sufficient proficiency to be able to administer medications safely and/or to perform non-complex tasks safely;

7. a statement signed by the RN who conducted the annual competency evaluation specifying when it was conducted and what tasks the direct service worker is authorized to perform; and

8. if applicable, a statement regarding termination of authorization with the date that authorization was terminated and the reason for termination. If the termination is due to a RN assessment of the health status of the person receiving assistance or the competency of the direct service worker, the statement shall be written and signed by the RN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012).

### **§9257. Liability**

A. Any registered nurse who has properly trained and documented that a direct service worker is competent to perform the prescribed tasks shall not be liable for any civil damages as a result of any act or omission of the direct service worker.

B. Any physician licensed to practice medicine by the Louisiana State Board of Medical Examiners, whether or not the physician developed the person's plan of care, including but not limited to the prescribed medical regime, who is rendering professional medical care services shall not be liable for any civil damages as a result of any negligent or intentional act or omission of the direct service worker or licensed and/or certified agency.

C. Notwithstanding any other provision of law, licensed and/or certified agencies that employ or contract direct service workers shall be liable for acts or omissions of the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012), amended LR 42:895 (June 2016).

### **§9259. Termination of Authorization to Perform Services**

A. Authorization for a direct service worker to perform medication administration and noncomplex tasks shall terminate for any of the following reasons.

1. The condition of the person for whom the direct service worker is performing the tasks has become unstable.

2. A registered nurse certifies that the direct service worker can no longer perform the prescribed tasks safely.

3. The direct service worker has a finding placed against him/her on the DSW Registry.

4. The direct service worker failed to comply with any provision of the enabling statute.

5. Additional person-specific training by a RN was not completed after the tasks to be performed or the types of medications to be administered changed.

6. The annual competency evaluation was not completed.

7. The person receiving assistance or their guardian has requested that the direct service worker no longer be authorized to administer or perform the authorized procedures for the person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012).

### **§9261. Violations and Noncompliance**

A. The Health Standards Section is responsible for investigation of complaints and noncompliance with these provisions.

B. In accordance with §9259.A.2, authorization for a direct service worker to perform any of the tasks specified in R.S. 37:1032 shall be terminated if the registered nurse certifies that the direct service worker can no longer perform the prescribed tasks safely and the direct service worker shall immediately cease performing such procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), amended LR 42:895 (June 2016).

## **Subchapter E. Violations**

### **§9273. Prohibited Direct Service Worker Conduct**

A. The department provides a process for the review and investigation of all allegations of wrong-doing by DSWs. The following constitutes prohibited DSW conduct:

1. verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on an individual being supported;
2. neglect of an individual being supported; or
3. exploitation, extortion, or misappropriation of the individual's person, property or funds, inclusive of, but not limited to, the following:
  - a. credit card fraud;
  - b. theft of a firearm;
  - c. identity theft;
  - d. fraudulent acquisition of a credit card; or
  - e. theft of a vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:895 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:664 (May 2019).

### **§9275. Notice of Violation**

A. When there are substantiated allegations against the direct service worker, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following:

1. the nature of the violation(s) and the date and time of each occurrence;
2. the department's intent to report these violations to the DSW Registry; and
3. appeal rights/opportunities:



- a. the right to request from HSS an informal discussion (informal dispute resolution process); and
- b. the right to request from the Division of Administrative Law an administrative hearing (appeal); or
- c. the right to bypass the informal dispute resolution process and request appeal with the Division of Administrative Law.

B. The specified timeframe, up to and including permanent status, to cease employment as a DSW in a licensed health care facility will be indicated in the notice letter of placement of the finding against the DSW.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), LR 42:895 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:664 (May 2019).

### **§9277. Informal Dispute Resolution**

A. When a direct service worker feels that he/she has been wrongly accused, the following procedure shall be followed:

1. The direct service worker may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the department's notice of violation. The request for an IDR shall be made to the HSS in writing.
2. The IDR is designed:
  - a. to provide an opportunity for the direct service worker to informally discuss the allegations that make the basis for placement of the finding;
  - b. for the agency to offer alternatives based on corrections or clarifications, if any; and
  - c. to evaluate the necessity for seeking an administrative hearing.
3. An IDR session will be arranged within 20 days of receipt of the written request.
4. During the IDR, the direct service worker will be afforded the opportunity to:
  - a. talk with agency personnel assigned to the IDR;
  - b. review pertinent documents upon which the alleged violation is based;
  - c. ask questions;
  - d. seek clarifications; and
  - e. provide additional information.
5. Notice of the results of the IDR decision will be forwarded to the DSW in writing. Such written notice will include any further opportunities for appeal, if necessary and/or appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:895 (June 2016).

## **Subchapter F. Administrative Hearings**

### **§9285. General Provisions**

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the direct service worker may request an administrative hearing.

1. The request for an administrative hearing shall be made in writing to the Division of Administrative Law, or its successor.
2. The request shall contain a statement setting forth the specific allegations which the direct service worker disputes and the reasons for this dispute.

3. Unless a timely and proper request is received by the Division of Administrative Law or its successor, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect, exploitation, extortion, and/or misappropriation will then be sent to the DSW registry to be recorded.

B. When an administrative hearing is scheduled, the Division of Administrative Law, or its successor, shall notify the direct service worker, his/her representative and the agency representative in writing.

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the Administrative Procedure Act.

D. If there is a final and binding administrative hearing decision to place a finding on the DSW registry against the direct service worker, the department shall place the direct service worker's name and the adverse findings on the DSW registry. The finding(s) may remain on the DSW registry against the DSW for a specified length of time up to and including permanently dependent on the severity and nature of the offense.

1. The specified timeframe, up to and including permanent status, to cease employment as a DSW in a licensed health care facility will be stated in the notice letter of placement of the finding against the DSW.

E. Removal of the DSW's name from the DSW registry.

1. For those DSWs who only have a placement of finding of neglect, HSS will consider removal of the DSW's name from the registry only upon the DSW's written request to the department for reinstatement and in accordance with the following:

a. the employment and personal history of the DSW does not reflect a pattern of abusive behavior or neglect or

instances of misappropriation, exploitation or extortion of an individual being supported;

b. the neglect involved in the original finding was a singular occurrence; and

c. a period of no less than one year has passed since the DSW's name was placed on the registry barring employment in a licensed health care facility as a DSW.

3. If the DSW successfully petitions the department to remove the DSW's name from the registry, the DSW will be notified in writing of such determination and date of removal.

4. If the DSW unsuccessfully petitions the department to remove the DSW's name from the registry, the DSW will be notified in writing of the department's decision and their right to an administrative appeal in accordance with §9275.A(3)a-c.

5. There shall be only one opportunity for a DSW to request removal of their name from the DSW registry.

6. There is no opportunity afforded for a DSW to request removal of a finding of abuse, extortion, misappropriation or exploitation placed against them on the registry.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2179-2179.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012), LR 42:896 (June 2016), amended by the Department of Health, Bureau of Health Services Financing, amended LR 45:664 (May 2019).

## Chapter 93. Hospitals

### Subchapter A. General Provisions

#### §9301. Purpose

A. The purpose of the hospital laws, rules and regulations is to provide for the development, establishment and enforcement of standards for the care of individuals in hospitals and for the construction, maintenance and operation of hospitals which shall promote safe and adequate treatment of individuals in hospitals.

B. A hospital shall be licensed in accordance with state law, rules and regulations adopted and established by the state agency responsible for the licensing of hospitals.

#### C. Primarily Engaged

1. Except as provided in §9301.C.2, hospitals shall be *primarily engaged*, as defined by this Rule and determined by the Department of Health, in providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons; or

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

2. Exemptions. The following licensed hospitals are not subject to the primarily engaged provisions and/or requirements of this Chapter:

a. a licensed hospital designated as a psychiatric hospital or a critical access hospital as defined by the Code of Federal Regulations;

b. a licensed hospital designated as a rural hospital as defined by R.S. 40:1189.3; and

c. a licensed hospital currently certified and enrolled as a Medicare/Medicaid certified hospital which has not been determined out of compliance with the federal definition of *primarily engaged*; if a hospital is currently Medicare/Medicaid certified, and has been determined to be currently meeting the federal definition of *primarily engaged*, it shall be exempt from compliance with the following provisions in this section regarding primarily engaged.

3. In reaching a determination as to whether or not an entity is primarily engaged in providing inpatient hospital services to inpatients of a hospital, the Department of Health will evaluate the total facility operations and consider multiple factors, subject to paragraph C.4 below.

a. Total Facility Operations. In evaluating the total facility operations, the department will review the actual provision of care and services to two or more inpatients, and the effects of that care, to assess whether the care provided meets the needs of individual patients by way of patient outcomes.

b. Multiple Factors. The factors that the department will consider include, but are not limited to:

i. the average daily census (ADC) of the main hospital and/or any off-site campus(es);

ii. the average length of stay (ALOS) of patients at the main hospital and/or any off-site campus(es);

iii. the number of off-site campus outpatient locations operated by the entity;

iv. the number of provider-based emergency departments for the entity;

v. the number of inpatient beds related to the size of the entity and the scope of the services offered;

vi. the volume of outpatient surgical procedures compared to the inpatient surgical procedures (if surgical services are provided);

vii. staffing patterns; and

viii. patterns of ADC by day of the week.

4. Notwithstanding any other provision of this rule, an entity shall not be considered to be primarily engaged in