

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

**Healthcare Services Provider Fees
(LAC 48:I.Chapter 40)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 40 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 46:2625. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with the requirements of House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature and R.S. 46:2626, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital and emergency ground ambulance services providers. This proposed Rule also amends the provisions governing the provider fees for nursing facility services, intermediate care facilities for individuals with developmental disabilities, and pharmacy services to more closely align these provisions with current governing authorities and to ensure that they are promulgated in a clear and concise manner in the *Louisiana Administrative Code*.

Title 48

PUBLIC HEALTH—GENERAL
PART I. GENERAL Administration
Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. Definitions

Emergency Ground Ambulance Service Provider—a non-public, non-federal provider of emergency ground ambulance services.

Net Operating Revenue—Repealed.

Quarter—for purposes of this Chapter, *quarters* shall be constituted as follows:

First Quarter	December, January, February
Second Quarter	March, April, May
Third Quarter	June, July, August
Fourth Quarter	September, October, November

EXCEPTION: For purposes of hospital and emergency ground ambulance services, *quarters* shall be constituted as follows:

First Quarter	July, August, September
Second Quarter	October, November, December
Third Quarter	January, February, March
Fourth Quarter	April, May, June

B. Nursing Facility Services

1. A fee shall be paid by each facility licensed as a nursing home in accordance with R.S. 40:2009.3 et seq., for each occupied bed on a per day basis. A bed shall be considered occupied, regardless of physical occupancy, based upon payment for nursing facility services available or provided to any individual or payer through formal or informal agreement. For example, a bed reserved and paid for during a temporary absence from a nursing facility shall be subject to the fee. Likewise, any bed or beds under contract to a Hospice shall be subject to the fee for each day payment is made by the Hospice. Contracts, agreements, or reservations, whether formal or informal, shall be subject to the fee only where payment is made for nursing services available or provided. Nursing facilities subject to the fee shall provide documentation quarterly, on a form provided by the department, of occupied beds in conjunction with payment of the fee.

2. The fee imposed for nursing facility services shall not exceed 6 percent of the net patient revenues received by providers of that class of services and shall not exceed \$12.08 per occupied bed per day. The fee amount shall be calculated annually in conjunction with updating provider reimbursement rates under the Medical Assistance Program. Notice to providers subject to fees shall be given in conjunction with

the annual rate setting notification by the Bureau of Health Services Financing.

C. Intermediate Care Facility for Individuals with Developmental Disabilities (ICF/DD) Services

1. A fee shall be paid by each facility licensed as an intermediate care facility for individuals with developmental disabilities in accordance with R.S. 46:2625 et seq., for each occupied bed per day. A bed shall be considered occupied, regardless of physical occupancy, based on payment for ICF/DD facility services available or provided to any individual or payer through formal or informal agreement. For example, a bed reserved and paid for during a temporary absence from a facility shall be subject to the fee. Likewise, any bed or beds under contract to a hospice shall be subject to the fee for each day payment is made by the hospice. Contracts, agreements, or reservations, whether formal or informal, shall be subject to the fee only where payment is made for ICF/DD facility services available or provided. ICF/DD facilities subject to fees shall provide documentation quarterly, on a form provided by the department, of occupied beds in conjunction with payment of the fee.

2. The fees imposed for ICF/DD facility services shall not exceed 6 percent of the net patient revenues received by providers of that class of service and shall not exceed \$30

per occupied bed per day. The fee amount shall be calculated annually in conjunction with updating provider reimbursement rates under the Medical Assistance Program. Notice to providers subject to fees shall be given in conjunction with the annual rate setting notification by the Bureau of Health Services Financing.

D. Pharmacy Services. A fee shall be paid by each pharmacy and dispensing physician for each out-patient prescription dispensed. The fee shall be \$0.10 per prescription dispensed by a pharmacist or dispensing physician. Where a prescription is filled outside of Louisiana and not shipped or delivered in any form or manner to a patient in the state, no fee shall be imposed. However, out-of-state pharmacies or dispensing physicians dispensing prescriptions which are shipped, mailed or delivered in any manner inside the state of Louisiana shall be subject to the \$0.10 fee per prescription. The fee only applies to prescriptions which are dispensed for human use. Pharmacies and dispensing physicians subject to the fees shall provide documentation quarterly, on a form provided by the department, in conjunction with payment of fees.

E. Emergency Ground Ambulance Services. Effective August 1, 2016, a fee shall be imposed on emergency ground ambulance service providers in accordance with R.S. 46:2626.

1. The total assessment for the initial state fiscal year in which the assessment is charged shall not exceed the lesser of the following:

a. the state portion of the cost, excluding any federal financial participation, of the reimbursement enhancements provided for in R.S. 46:2626 that are directly attributable to payments to emergency ground ambulance services providers; or

b. 1 1/2 percent of the net operating revenue of all emergency ground ambulance service providers assessed relating to the provision of emergency ground ambulance transportation.

c. - d. Repealed.

2. Except for the first year maximum fee of 1 1/2 percent of the net operating revenue, the department shall not impose any new fee or increase any fee on any emergency ground ambulance service provider on or after July 1, 2016, without first obtaining either of the following:

a. prior approval of the specific fee amount by record vote of two-thirds of the elected members of each house of the legislature while in regular session.

b. written agreement of those providers subject to the fee which provide a minimum of 65 percent of the emergency ground ambulance transports.

3. After the initial year of assessment, the assessment shall be a percentage fee, determined at the discretion of the secretary and subject to the provisions below in collaboration with the express and written mutual agreement of the emergency ground ambulance service providers subject to the assessment and which make up a minimum of 65 percent of all emergency ground ambulance transports in the state of Louisiana.

a. the maximum fee allowable in any year shall not exceed 3 1/2 percent of the annual net operating revenue of the emergency ground ambulance service provider and subject to audit for the previous fiscal year of the provider.

4. Prior to levying or collecting the assessment for the applicable assessment period, the department shall publish in the official state journal the total amount of the assessment and the corresponding applicable percentage of net operating revenue that will be applied to the assessed providers.

F. Hospital Services

1. Effective January 1, 2017, a hospital stabilization assessment fee shall be levied and collected in accordance with article VII, section 10.13 of the Constitution of Louisiana and any legislation setting forth the hospital stabilization formula.

a. The total assessment for each state fiscal year shall be equal to, but shall not exceed, the lesser of the following:

i. the state portion of the cost, excluding any federal financial participation and any costs associated with full Medicaid pricing, of payments for healthcare services through the implementation of a health coverage expansion of the Louisiana Medical Assistance Program that meets all the necessary requirements necessary for the state to maximize federal matching funds as set forth in 42 U.S.C. 1396(d) of Title XIX of the Social Security Act, which are directly attributable to payments to hospitals; or

1.a.ii. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, designated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and P.L. 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887, 1888 (November 2016),

amended by the Department of Health, Bureau of Health Services Financing, LR 43:73 (January 2017), repromulgated by the Department of Health, Bureau of Health Services Financing, LR 43:323 (February 2017), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§4003. Due Date for Submission of Reports and Payment

A. Quarterly Reports and fees shall be submitted to the department and shall be due on the twentieth calendar day of the month following the close of the quarter and shall be deemed delinquent on the thirtieth calendar day of that month. Even if no fee is due, submission of the report is still mandatory.

B. For hospital and emergency ground ambulance services, payment is due 30 days from the notification of the amount owed.

1. - 2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR

42:1887 (November 2016), amended by the Department of Health,
Bureau of Health Services Financing, LR 44:

§4005. Delinquent and/or Unfiled Reports

A. Penalty Assessment. In the case a report has been determined delinquent, the specific penalty shall be 5 percent of the total fee due on the report for every 30 days that the report is not filed, not to exceed 180 days. When a report is not received within 180 days from the due date, the report shall be deemed not filed and there shall be cause for an audit, investigation or examination to be made by the department.

B. Estimation of Provider Fee Due. In those cases in which a health care provider fails to file the quarterly report, the department will estimate the provider fee due. The department will, by certified mail, notify the provider of the estimated fee due, the method used to calculate the estimated fee and the department's intent to collect the delinquent fee. The provider shall have 15 days from the date of the notice to file a provider fee report with the department. Any provider who fails to file the quarterly report within 15 days of the date of the department's estimated provider fee notice shall waive any and all rights to appeal the department's action and to contest payment of the estimated fee.

C. Incorrect Reporting. If a provider submits a quarterly report required by the provisions of this Chapter and the report

made and filed does not correctly compute the amount of the fee owed, there shall be cause for an audit, investigation or examination to be made by the department.

D. False or Fraudulent Reporting. When a provider files a quarterly report that is false or fraudulent or grossly incorrect, there shall be imposed, in addition to any other sanctions allowed under rule or law, a specific penalty of 50 percent of the fee due.

E. ...

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 26:1479 (July 2000) amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§4007. Delinquent and/or Unpaid Fees

A. When the provider fails to pay the fee due, or any portion thereof, on or before the date it becomes delinquent, interest at the rate of 1 1/2 percent per month compounded daily shall be assessed on the unpaid balance until paid.

B. Collection of Delinquent Fees

1. For those health care providers enrolled in the Louisiana Medical Assistance Program (Medicaid), collection of delinquent provider fees will be as follows.

a. The department will withhold from the provider's Medicaid reimbursement, an amount equal to 50 percent of the reimbursement or the actual amount of the delinquent provider fee, including interest and penalty, whichever is less.

1.b. - C. ...

D. - E.1.b. Repealed.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:1114 (October 1994), LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887 (November 2016) amended by the Department of Health, Bureau of Health Services Financing, LR 44:

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, and no direct or indirect cost to the provider to provide the same level of service. These provisions 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 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, April 26, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Yolanda Ellis
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Dept.: Health
Office: Bureau of Health Services
Financing

Return
Address: P.O. Box 91030
Baton Rouge, LA

Rule Title: Healthcare Services Provider
Fees

Date Rule Takes Effect: June 20, 2018

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$1,512 (\$756 SGF and \$756 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Article VII, Section 10.13 of the Constitution of Louisiana, requires that a House Concurrent Resolution be adopted in each legislative session setting forth the hospital stabilization formula for the subsequent fiscal years. It is anticipated that the implementation of this proposed rule will increase statutory dedicated revenue collections by approximately \$51,549,082 for FY 17-18. It is anticipated that \$1,512 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

In compliance with the requirements of House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature and R.S. 46:2626, this proposed Rule amends the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospitals. The proposed Rule also amends the provisions governing provider fees for emergency ground ambulance services providers, nursing facility services, intermediate care facilities for individuals with developmental disabilities, and pharmacy services to make technical edits to more closely align these provisions with current governing authorities and to ensure that they are promulgated in a clear and concise manner in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will result in an increase in statutory dedicated revenue collection of approximately \$51,549,082 for FY 17-18 as a result of the hospital stabilization assessment fee.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.



Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee

Evan Brant, Staff Director

Legislative Fiscal Officer
or Designee

3/8/13

Date of Signature

Bladimir J. ...

LDH/BHSF Budget Head

03/27/18

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

In compliance with the requirements of House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature and R.S. 46:2626, this proposed Rule amends the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital and emergency ground ambulance services providers. The proposed Rule also amends the provisions governing provider fees for nursing facility services, intermediate care facilities for individuals with developmental disabilities, and pharmacy services to more closely align these provisions with current governing authorities and to ensure that they are promulgated in a clear and concise manner in the Louisiana Administrative Code.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

In compliance with the requirements of House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature and R.S. 46:2626, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital and emergency ground ambulance services providers. This proposed Rule also amends the provisions governing the provider fees for nursing facility services, intermediate care facilities for individuals with developmental disabilities, and pharmacy services to more closely align these provisions with current governing authorities and to ensure that they are promulgated in a clear and concise manner in the Louisiana Administrative Code.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$1,512 will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 17-18	FY 18-19	FY 19-20
PERSONAL SERVICES			
OPERATING EXPENSES	\$1,512	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$1,512	\$0	\$0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 17-18, \$1,512 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	\$756		
SELF-GENERATED			
FEDERAL FUND	\$756	\$0	\$0
OTHER (Specify)	\$51,549,082	\$0	\$0
Total	\$51,550,594	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*	\$51,549,082	\$0	\$0
FEDERAL FUNDS	\$756	\$0	\$0
LOCAL FUNDS			
Total	\$51,549,838	\$0	\$0

*Specify the particular fund being impacted - Statutory Dedicated Revenue

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

The amounts reflected above are the estimated increases in statutory dedicated revenue collections and federal revenue collections to the department. In FY 17-18, \$756 is included for the federal expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

In compliance with the requirements of House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature and R.S. 46:2626, this proposed Rule amends the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospitals. The proposed Rule also amends the provisions governing provider fees for emergency ground ambulance services providers, nursing facility services, intermediate care facilities for individuals with developmental disabilities, and pharmacy services to make technical edits to more closely align these provisions with current governing authorities and to ensure that they are promulgated in a clear and concise manner in the Louisiana Administrative Code.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule will result in an increase in statutory dedicated revenue collection of approximately \$51,549,082 for FY 17-18 as a result of the hospital stabilization assessment fee.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.