

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—the gross revenues of an emergency ground ambulance service provider for the provision of emergency ground ambulance transportation services, excluding any Medicaid reimbursement, less any deducted amounts for bad debts, charity care and payer discounts.~~ Repealed.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:

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

B. Nursing Facility Services

1. A ~~bed~~-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 ~~utilized for the provision of care~~ on a ~~daily~~ per day basis. ~~The fee shall be imposed for each bed per day utilized for the provision of care.~~ A bed shall be considered ~~in~~ use occupied, regardless of physical occupancy, based ~~on~~ 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 ~~bed~~-fee shall provide documentation quarterly, on a form provided by the department, of ~~utilization for all~~ ~~licensed~~ occupied beds in conjunction with payment of the fee.

2. The ~~provider~~-fee imposed for nursing facility services shall not exceed 6 percent of the ~~average~~-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 ~~Mentally Retarded for~~ Individuals with Developmental Disabilities (ICF-~~MR/DD~~) Services

1. A ~~bed~~-fee shall be paid by each facility licensed as an intermediate care facility for ~~the mentally retarded~~ individuals with developmental disabilities in accordance with R.S. ~~28:421~~-46:2625 et seq., for each occupied bed ~~utilized for the provision of care on a daily basis~~per day. ~~The fee shall be imposed for each bed per day utilized for the provision of care.~~

A bed shall be considered ~~in use~~ occupied, regardless of physical occupancy, based on payment for ICF-~~MR/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 ~~H~~hospice shall be subject to the fee for each day

payment is made by the ~~H~~hospice. Contracts, agreements, or reservations, whether formal or informal, shall be subject to the fee only where payment is made for ICF-~~MR/DD~~ facility services available or provided. ICF-~~MR/DD~~ facilities subject to ~~bed~~-fees shall provide documentation quarterly, on a form provided by the department, of ~~utilization for all licensed~~ occupied beds in conjunction with payment of the fee.

2. The ~~provider~~-fees imposed for ICF-~~MR/DD~~ facility services shall not exceed 6 percent of the ~~average~~-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 ~~prescription~~-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 ~~and sold~~ for human use. Pharmacies and dispensing physicians subject to ~~prescription~~ the fees shall provide documentation quarterly, on a form provided by the department, ~~of utilization for all medications dispensed~~ in conjunction with payment of fees.

E. ~~Medical Transportation~~ Emergency Ground Ambulance Services. Effective ~~for dates of service on or after~~ August 1, 2016, ~~qualifying a fee shall be imposed on~~ emergency ground ambulance service providers ~~shall be assessed a fee of 1 1/2 percent of the net operation revenue~~ in accordance with R.S. 46:2626.

1. ~~Qualifying Criteria. Ambulance service providers must meet the following requirements in order to be assessed a fee of 1 1/2 percent of the net operating revenue. The ambulance service provider must be~~ The total assessment for the initial state fiscal year in which the assessment is charged shall not exceed the lesser of the following:

a. ~~licensed by the state of Louisiana~~ 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. ~~enrolled as a Louisiana Medicaid provider;~~ 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.

~~e. a provider of emergency ground ambulance~~
~~transportation services as defined in 42 CFR 440.170 and Medical~~
~~and Remedial Care and Services Item 24.a; and~~

~~d. a non-federal, non-public provider in the~~
~~State of Louisiana, as defined in 42 CFR 433.68(c)(1), of~~
~~emergency ground ambulance services that is contracted with a~~
~~unit of local or parish government in the state of Louisiana for~~
~~the provision of emergency ground ambulance transportation on a~~
~~regular 24 hours per day and 7 days per week basis.~~ 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 House Concurrent Resolution (HCR) 51 of the~~

~~2016 Regular Session of the Louisiana Legislature~~ 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 ~~the reimbursement enhancements provided for in HCR 51~~ 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)y 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 ~~of Fees~~

A. ~~The department will mail a Quarterly Utilization Report to each licensed provider covered under the scope of this statute at the address given in the last report filed pursuant to the provisions of R.S. 46:2601-2605. The provider shall promptly notify the department of any change of address.~~

Quarterly ~~Utilization~~ 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. ~~Medical Transportation Services. Effective August 1, 2016, qualified ambulance service providers will be assessed a fee at the end of each quarter not to exceed 1 1/2 percent of the net operating revenue of~~ For hospital and emergency ground

ambulance services, providers payment is due 30 days from the notification of the amount owed.

~~1. Qualified ambulance service providers will provide the Department of Health (department) a monthly net operating revenue report for emergency ground ambulance transportation services by the fifteenth business day of the following month.~~

~~2. Qualified ambulance service providers will be issued a quarterly notice within 30 days from the end of the quarter. Payment will be due to the department by qualified ambulance service providers within 30 days from date of notice.~~
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 ~~or fraction thereof~~ that the report is not filed, not to exceed ~~150~~180 days. When a report is not received within ~~150~~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 Utilization R~~eport, 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 d fee and the department's intent to collect the delinquent fee. The provider shall have ~~10~~15 days from the date of ~~receipt of~~ the notice to file a provider fee report with the department. Any provider who fails to file the ~~Quarterly Utilization R~~eport within ~~10~~15 days of the date ~~of receipt 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 ~~liability~~ amount

of the ~~provider 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 ~~and the circumstances indicate that the provider had intent to defraud the state of Louisiana of any fee due under this Chapter~~, there shall be imposed, in addition to any other ~~penalties provided~~ 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. ~~Interest on Unpaid Provider Fees Other Than Medical Transportation Provider Fees.~~ 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. ~~In the case of interest on a penalty assessed, such interest shall be computed beginning 15 days from the date of notification of assessment until paid.~~

B. Collection of Delinquent ~~Provider Fee other than Medical Transportation Provider Fees~~

1. For those ~~enrolled as~~ 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 ~~check~~, an amount equal to 50 percent of the reimbursement ~~check~~ or the actual amount of the delinquent provider fee, including interest and penalty, whichever is less.

1.b. - C. ...

~~D. The department shall refund any overpayment to the provider.~~

~~E. Emergency Ground Ambulance Service Provider Fees~~

~~1. Penalties and Interest for Non-Payment of Assessment~~

~~a. If the department audits a qualifying ambulance service provider's records and determines the net operating revenue reported is incorrect for the assessment collected, the department shall fine the qualifying ambulance~~

~~service provider .15 percent of the corrected assessment. The fine is payable within 30 days of the invoice.~~

~~b. If a qualifying ambulance service provider fails to fully pay its assessment on or before the due date, the department shall assess a late penalty of .15 percent of the quarterly calculated assessment. The department shall reserve the right to suspend all Medicaid payments to a qualifying ground ambulance service provider until the provider pays the assessment and penalty due in full or until the provider and the department reach a negotiated settlement.~~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