

NOTICE OF INTENT

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

**Nursing Facilities
Reimbursement Methodology
Transition of Private Facilities to State-Owned or
Operated Facilities Through Change of Ownership
(LAC 50:II.20023 and 20024)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.20023 and adopt LAC 50:II.20024 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

In compliance with the directives of Act 933 of the 2010 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing currently provides reimbursement for the transition of a state-owned or operated nursing facility to a private nursing facility.

As a result of a budgetary shortfall in state fiscal year 2018-2019, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to adopt provisions governing the transition of a private nursing facility to a state-owned or operated nursing facility through a change of ownership (*Louisiana Register*, Volume 44, Number 7). This proposed Rule is

being promulgated to continue the provisions of the July 5, 2018
Emergency Rule.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement**

Chapter 200. Reimbursement Methodology

**§20023. Transition of State-Owned or Operated Nursing Facility
to a Private Facility**

A. - D.7. ...

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.
36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health
and Hospitals, Bureau of Health Services Financing, LR 37:903
(March 2011), amended by the Department of Health, Bureau of
Health Services Financing, LR 44:

**§20024. Transition of Private Nursing Facility to a State-
Owned or Operated Nursing Facility through a Change of Ownership**

A. Any private nursing facility that undergoes a change
of ownership (CHOW) to a state-owned or operated nursing
facility will be exempt from the prospective reimbursement
system for public nursing facilities during the transitional
period.

1. The transitional period will be effective from
the date of the CHOW until the July 1 rate setting period

following when the state-owned or operated nursing facility has an audited or reviewed 12 month or greater cost reporting period available for use in rate setting.

2. After the transitional period, the nursing facility will be reimbursed pursuant to the requirements of the prospective reimbursement system for public nursing facilities.

B. Effective for dates of service on or after July 5, 2018, the reimbursement amount paid to a public nursing facility during the transitional period shall be as follows:

1. Public nursing facilities transitioning from private ownership shall receive a monthly interim payment based on occupancy, which shall be a per diem rate of \$365.68.

2. For each cost reporting period ending during the transitional period a cost settlement process shall be performed. The cost settlement process shall ensure that Medicaid reimbursement for each public nursing facility transitioning from private ownership is equal to 100 percent of the nursing facility's Medicaid allowable cost for the applicable cost reporting period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that nursing facility provider participation in the Medicaid Program is diminished as a result of the reduction in payments.

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 may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that access to nursing facility services is reduced as a result of diminished provider participation due to the reduction in payments.

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, but may increase direct or indirect cost to the provider to provide the same level of service due to the reduction of payments for these services. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the reduction in payments adversely impacts the provider's financial standing.

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, December 27, 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

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Rule Title:

Nursing Facilities
Reimbursement Methodology
Transition of Private Facilities
to State-Owned or Operated
Facilities Through
Change of Ownership

Date Rule Takes Effect: July 5, 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 the implementation of this proposed rule will result in estimated state general fund programmatic cost of approximately \$438,198 for FY 18-19, \$444,010 for FY 19-20 and will be cost neutral for FY 20-21. It is estimated that implementation of this proposed rule will increase expenditures initially, but will result in a net cost avoidance for FYs 18-19 and 19-20 which will be realized in FY 20-21. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.23 percent in FYs 18-19 and 19-20.

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


It is anticipated that the implementation of this proposed rule will increase revenue collections by \$786,630 for FY 18-19 and \$797,282 for FY 19-20. It is anticipated that \$270 will be collected in FY 18-19 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.23 percent in FYs 18-19 and 19-20.

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

This proposed Rule continues the provisions of the July 5, 2018 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to adopt provisions governing the transition of a private nursing facility to a state-owned or operated nursing facility through a change of ownership. There is 1 nursing facility provider which may be impacted by the implementation of this proposed rule due to the reduced reimbursement rates resulting from the provider's transition from a private nursing facility to a state-owned or operated facility. It is anticipated that implementation of this proposed rule may increase Medicaid programmatic expenditures for the nursing facility by approximately \$1,224,288 for FY 18-19, \$1,241,292 for FY 19-20 and \$0 for FY 20-21.

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. However, we anticipate that the implementation may have a negative effect on employment as it may reduce the reimbursements made to the affected nursing facility. The reduction in payments may adversely impact the financial standing of the nursing facility and could possibly cause a reduction in employment opportunities.



Signature of Agency Head
or Designee

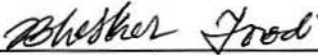
Jen Steele, Medicaid Director
Typed name and Title of
Agency Head or Designee



Legislative Fiscal Officer
or Designee

11/9/18

Date of Signature



LDH/BHSF Budget Head

11/09/18

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).

This proposed Rule continues the provisions of the July 5, 2018 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to adopt provisions governing the transition of a private nursing facility to a state-owned or operated nursing facility through a change of ownership.

- 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 directives of Act 933 of the 2010 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing currently provides reimbursement for the transition of a state-owned or operated nursing facility to a private nursing facility.

As a result of a budgetary shortfall in state fiscal year 2018-2019, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to adopt provisions governing the transition of a private nursing facility to a state-owned or operated nursing facility through a change of ownership (Louisiana Register, Volume 44, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 5, 2018 Emergency Rule.

- 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.

Yes. This proposed rule will result in an increase in Medicaid programmatic expenditures for nursing facilities by approximately \$1,224,828 for FY 18-19 and \$1,241,292 for FY 19-20. It is anticipated that \$540 will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final.

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

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

Act 2 of the 2018 Second Extraordinary Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. This proposed Rule will ultimately be cost neutral to the state in the out years.

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 18-19	FY 19-20	FY 20-21
PERSONAL SERVICES			
OPERATING EXPENSES	\$540	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$1,241,292	1,241,292	
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$1,224,828	1,241,292	\$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.

The expenses reflected above are the estimated increases in expenditures in the Medicaid Program. In FY 18-19, \$540 will be spent 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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND	\$438,198	\$444,010	\$0
SELF-GENERATED			
FEDERAL FUND	\$786,630	\$797,282	\$0
OTHER (Specify)			
Total	\$1,224,828	\$1,241,292	\$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 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$786,630	\$797,282	\$0
LOCAL FUNDS			
Total	\$786,630	\$797,282	\$0

*Specify the particular fund being impacted

- 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 the federal share of expenditures in the Medicaid Program. In FY 18-19, \$270 will be collected for the federal share of the administrative 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.)

This proposed Rule continues the provisions of the July 5, 2018 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to adopt provisions governing the transition of a private nursing facility to a state-owned or operated nursing facility through a change of ownership.

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

There is 1 nursing facility provider which may be impacted by the implementation of this proposed rule due to the reduced reimbursement rates resulting from the provider's transition from a private nursing facility to a state-owned or operated facility. It is anticipated that implementation of this proposed rule may increase Medicaid programmatic expenditures for the nursing facility by approximately \$1,224,288 for FY 18-19, \$1,241,292 for FY 19-20 and \$0 for FY 20-21.

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. However, we anticipate that the implementation may have a negative effect on employment as it may reduce the reimbursements made to the affected nursing facility. The reduction in payments may adversely impact the financial standing of the nursing facility and could possibly cause a reduction in employment opportunities.