

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Healthcare Services Provider Fees Hospital Fee Assessments (LAC 48:I.4001 and 4007)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4001 and §4007 as authorized by R.S. 36:254. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Pursuant to article VII, section 10.13 of the Constitution of Louisiana, the Louisiana legislature establishes an annual hospital stabilization formula via concurrent resolution which directs the Department of Health, Bureau of Health Services Financing to calculate, levy, and collect an assessment for each assessed hospital. In compliance with article VII, section 10.13 of the Louisiana Constitution and the Louisiana legislature concurrent resolution, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital services providers (*Louisiana Register*, Volume 48, Number 10). This proposed Rule is being promulgated to continue the provisions of the September 21, 2022 Emergency Rule.

Title 48
PUBLIC HEALTH—GENERAL
PART I. GENERAL Administration
Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. - E.3.a. ...

F. Hospital Services

1. Effective ~~January 1, 2017~~July 1, 2022, 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, and departmental requirements relative to directed payments.

a. ~~The total~~ Subject to written approval by the Centers for Medicare and Medicaid Services (CMS) of a directed payment arrangement pursuant to 42 C.F.R. 438.6, the Department of Health shall levy and collect an assessment ~~for each state fiscal year shall be equal~~from those hospitals subject to, but shall not exceed, the lesser of the following:approved directed payment arrangement. Each approved directed payment arrangement is effective for one Healthy Louisiana Medicaid managed care contract rating period.

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~~ Prior to the levy of any assessment pursuant to this Subsection, the Department of Health shall submit a Medicaid assessment report to the Joint Legislative Committee on the Budget. The Medicaid assessment report shall include a description of the proposed assessment, the basis for the calculation of the assessment, and a listing of each hospital included in the proposed assessment. The hospital assessment shall be calculated in accordance with the annual hospital stabilization formula set forth by the Legislature of 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~~ and enacted pursuant to article VII, section 10.13 of the Constitution of Louisiana.

ii. ~~one percent of the total inpatient and outpatient net patient revenue of all hospitals included in the~~ An assessment, as reported in the Medicare cost report ending in state fiscal year 2015 levied pursuant to this Subsection shall be levied only for the quarters that directed payments are actually paid to qualified hospitals pursuant to 42 C.F.R. 438.6 directed payment arrangements approved by CMS.

2. ~~The~~ Individual hospitals subject to an assessment under this Subsection shall be ~~allocated~~ obligated to ~~each~~ assessed hospital on a pro rata basis by calculating the ~~quotient of the total~~ pay such assessment ~~divided by the total inpatient and outpatient hospital net patient revenue~~ regardless of ~~all assessed hospitals, as reported in the Medicare cost report ending in state fiscal year (SFY) 2015, and multiplying the quotient by each assessed hospital's total inpatient and outpatient~~ whether a directed payment is actually paid to the hospital net patient revenue. ~~If a hospital was not required to file a Medicare cost report or did not file a Medicare cost report ending in SFY 2015, the hospital shall submit to the department its most applicable calendar year total of inpatient and outpatient hospital net patient revenue in a form prescribed by~~ for the department quarter for which the assessment is levied.

3. The assessment will be levied and collected on a quarterly basis and at the beginning of each quarter that the assessment is due. ~~Prior to levying or collecting the assessment for the applicable quarterly period, the department shall publish in the Louisiana Register the total amount of the quarterly assessment and the corresponding percentage of total inpatient and outpatient hospital net patient revenue that will be applied to the assessed hospitals.~~

~~4. Hospitals meeting the definition of a rural hospital, as defined in R.S. 40:1189.3, shall be excluded from this assessment.~~

~~5. No licensed facility, which is prohibited from participating in the Medicare Program set forth in 42 U.S.C. 1396, shall be assessed or levied any fee for the hospital stabilization authorized in Article VII, Section 10.13 of the Constitution of Louisiana. This provision is specifically subject to the approval of any waiver required by the Centers for Medicare and Medicaid Services and approval by the Department of Health~~
4. - 5. 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 P.L. 102-234, R.S. 36:254, and Article VII, Section 10.13 of the Constitution of Louisiana.

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), LR 43:73 (January 2017), repromulgated LR 43:323 (February 2017),

amended LR 44:1015 (June 2018), LR 44:1894 (October 2018), LR 45:1597 (November 2019), LR 49:

§4007. Delinquent and/or Unpaid Fees

A. - C. ...

D. In accordance with departmental requirements relative to directed payments, hospitals that fail to pay the assessment due, or any portion thereof, may be subject to one or more of the following:

1. exclusion from participation in any directed payment arrangement approved by the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 438.6;

2. revocation of the hospital's license; or

3. termination of the hospital's enrollment in the Medical Assistance Program (Medicaid).

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), LR 44:1017 (June 2018), LR 49:

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.

Family Impact Statement

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.

Poverty Impact Statement

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.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

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 will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on December 30, 2022.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on December 12, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on December 29, 2022 in Room 118 of the Bienville Building, which is located at 628 North Fourth

Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after December 12, 2022. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary