John Bel Edwards
GOVERNOR

Stephen R. Russo JD
INTERIM SECRETARY

State of Louisiana

Louisiana Department of Health
Office of the Secretary

April 9, 2020

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD
Interim Secretary Cindy Rives

Re: Second Report on Proposed Amendments to LAC 50:XXVII.541) – Medical Transportation Program Non-Emergency Medical Transportation

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Medicaid Eligibility rule amendment.

A Notice of Intent on the proposed amendments was published in the February 20, 2020 issue of the *Louisiana Register* (LR 46:276). No written comments or requests for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2020, Notice of Intent when it is published as a final rule in the May 20, 2020, issue of the *Louisiana Register.*

Please contact Jen Katzman, Deputy Medicaid Director at jennifer.katzman@la.gov, if you have any questions or require additional information about this matter.

Cc: Jen Katzman, Deputy Medicaid Director, Louisiana Department of Health
Veronica Dent, Medicaid Program Manager, Policy and Waivers
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
(LAC 50:XXVII.541)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.541 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.

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing provider enrollment in the non-emergency medical transportation (NEMT) program in order to lower the minimum liability insurance coverage requirements and reduce insurance premiums paid by NEMT providers to sustain and increase provider participation in the NEMT program (*Louisiana Register*, Volume 46, Number 1). This Emergency Rule also removed language referring to prepayment of premiums from the administrative Rule to align with current practices. This proposed Rule is being promulgated in order to continue the provisions of the December 27, 2019 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter C. Provider Responsibilities

§541. Provider Enrollment

A. All transportation providers must comply with the published rules and regulations governing the Medicaid Transportation Program, all state laws, and the regulations of any other governing state agency or commission or local entity to which they are subject as a condition of enrollment and continued participation in the Medicaid Program.

B. Non-emergency medical transportation profit providers shall have a minimum liability insurance coverage of ~~$100,000~~$25,000 per person ~~and $300,000~~, $50,000 per accident ~~or a $300,000 combined service limits~~and $25,000 property damage policy.

1. The liability policy shall cover any and all:

a. - b. ...

c. non-owned autos~~.~~; or

d. scheduled autos;

e. hired autos; and

f. non-owned autos.

2. ~~Premiums shall be prepaid for a period of six months. Proof of prepaid insurance must be a true and correct~~

~~copy of the policy issued by the home office of the insurance company.~~ Statements of insurance coverage from the agent writing the policy will not be acceptable. Proof must include the dates of coverage and a 30-day cancellation notification clause. Proof of renewal must be received by the department no later than 48 hours prior to the end date of coverage. The policy must provide that the 30-day cancellation notification be issued to the Bureau of Health Services Financing.

3. Upon notice of cancellation or expiration of the coverage, the department will immediately ~~cancel~~revoke the provider's Medicaid provider agreement ~~for participation~~. The ending date of the provider's participation in the Medicaid program shall be the ending date of insurance coverage. Retroactive coverage statements will not be accepted. ~~Providers who lose the right to participate due to lack of prepaid insurance may re-enroll in the transportation program and will be subject to all applicable enrollment procedures, policies, and fees for new providers.~~

C. As a condition of reimbursement for transporting Medicaid recipients to medical or behavioral health services, family and friends must maintain the state minimum automobile liability insurance coverage, a current state inspection sticker, and a current valid driver's license. No special inspection by the department will be conducted. Proof of

compliance with the three listed requirements for this class of provider must be submitted when enrollment in the department is sought. Proof shall be the sworn and notarized statement of the individual enrolling for payment, certifying that all three requirements are met. Family and friends ~~shall~~may be enrolled and ~~shall be~~ allowed to transport up to three specific Medicaid recipients or all members of one ~~Medicaid assistance unit~~household. The recipients to be transported by each such provider will be noted in the computer files of the department. Individuals transporting more than three Medicaid recipients shall be considered profit providers and shall be enrolled as such.

D. - E. ...

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, Office of the Secretary, Bureau of Health Services Financing, LR 20:1115-1117 (October 1994), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1092 (July 2016), LR 45:

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses, as described in R.S. 49:965.2 et seq. as it will reduce insurance premiums paid by NEMT providers.

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, but may reduce the total direct and indirect cost to the provider to provide the same level of service due to the reduction in liability insurance premiums, and may enhance 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 Erin Campbell, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Campbell is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on March 31, 2020.

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 March 11, 2020. 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 March 26, 2020 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 March 11, 2020. 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.

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Interim Secretary

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April 9, 2020

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Stephen R. Russo, JD
Interim Secretary Cindy Rivers

Re: Second Report on Proposed Amendments to LAC 50:II.10123 and 20001) – Nursing Facilities Optional State Assessment

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Medicaid Eligibility rule amendment.

A Notice of Intent on the proposed amendments was published in the February 20, 2020 issue of the *Louisiana Register* (LR 46:278). No written comments or requests for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2020, Notice of Intent when it is published as a final rule in the May 20, 2020, issue of the *Louisiana Register.*

Please contact Jen Katzman, Deputy Medicaid Director at jennifer.katzman@la.gov, if you have any questions or require additional information about this matter.

Cc: Jen Katzman, Deputy Medicaid Director, Louisiana Department of Health
Veronica Dent, Medicaid Program Manager, Policy and Waivers
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Nursing Facilities
Optional State Assessment
(LAC 50:II.10123 and 20001)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.10123 and 20001 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 requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing nursing facility reimbursements in order to mandate the use of the optional state assessment item set to replace Medicare prospective payment system assessments retired by CMS due to the implementation of the patient driven payment model.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 3. Standards for Payment

Chapter 101. Standards for Payment for Nursing Facilities

Subchapter D. Resident Care Services

§10123. Comprehensive Assessment

A. The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity and needs, in relation to a number of specified areas. Comprehensive assessments must:

A.1. – F. ...

1. Components of comprehensive assessment (RAI):

a. – b. ...

c. ~~resident assessment protocol (RAP)~~care area assessment; and

1.d. – 5. ...

6. Quarterly Assessment ~~And~~ and Optional Progress Notes—To track resident status between assessments and to ensure monitoring of critical indicators of the gradual onset of significant declines in resident status, a registered nurse:

a. – b.viii. ...

7. Triggers—Level of measurement (coding categories) of MDS elements that identify residents who require evaluation using ~~RAPS~~ the care area assessment (CAA) process.

~~8. Resident Assessment Protocols (RAPS):~~

~~a. complete MDS elements using common definitions;~~

~~b. review MDS and use the triggers worksheet that shows which MDS elements serve as triggers for each RAP;~~

~~c. if MDS items and codes trigger a RAP, identify those RAPS that have been triggered and include these in the comprehensive care plan;~~

~~d. delegate completion of a particular RAP to facility staff who can address that care area most knowledgeably;~~

~~e. use the RAPS Summary Form to document decision about care planning and to specify where a summary of the information gained from the assessment is noted in the resident's record;~~

~~f. the RAPS summary must include (as appropriate to the individual resident):~~

~~i. documentation of problems, complications, and risk factors;~~

~~ii. need for referral to appropriate health professional; and~~

~~iii. reason for deciding whether or not to proceed to care planning for the specific problem identified;~~

~~g. the RAPS summary sheet must be signed and dated by the RN coordinator to verify that the triggered RAPS have been applied.~~8 - 8.g. Repealed.

G. Care Area Assessment (CAA) Process and Care Planning

1. CAAs are triggered responses to items coded on the MDS specific to a resident's possible problems, needs or strengths.

2. The CAA process provides:

a. a framework for guiding the review of triggered areas;

b. clarification of a resident's functional status and related causes of impairments; and

c. a basis for additional assessment of potential issues, including related risk factors.

3. The CAA must:

a. be conducted or coordinated by a registered nurse (RN) with the appropriate participation of health professionals;

b. have input that is needed for clinical decision making (e.g., identifying causes and selecting interventions) that is consistent with relevant clinical standards of practice; and

c. address each care area identified under CMS's RAI Version 3.0 Manual, section 4.10, Table 10 (The Twenty Care Areas).

4. CAA documentation should indicate:

a. the basis for decision making;

b. why the finding(s) require(s), or does not require, an intervention; and

c. the rationale(s) for selecting specific interventions.

H. Effective for assessments with assessment reference dates October 1, 2020 and after, the Department of Health mandates the use of the optional state assessment (OSA) item set. The OAS item set is required to be completed in conjunction with each assessment and at each assessment interval detailed within this Section. The OSA item set must have an assessment reference date that is identical to that of the assessment it was performed in conjunction with.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended by the Department of Health, Bureau of Health Services Financing, LR 46:

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20001. General Provisions

A. Definitions

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Minimum Data Set (MDS)—a core set of screening and assessment data, including common definitions and coding categories that form the foundation of the comprehensive assessment for all residents of long-term care nursing facility providers certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within nursing facility providers, between nursing facility providers, and between nursing facility providers and outside agencies. The Louisiana system will employ the current required MDS assessment as approved by the Centers for Medicare and Medicaid Services (CMS), or as mandated by the Department of Health through the use of optional state assessment (OSA).

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B. - C.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012), amended by the Department of Health, Bureau of Health

Services Financing, LR 42:1522 (September 2016), LR 43:525 (March 2017), LR 43:2187 (November 2017), LR 46:

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.

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that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

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Public Comments

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public hearing at 9:30 a.m. on March 26, 2020 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 March 11, 2020. 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.

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