



**State of Louisiana**  
Louisiana Department of Health  
Office of the Secretary

May 10, 2019

**Via Statutorily Prescribed Email**

**To:** The Honorable Fred H. Mills, Jr. Chairman, Senate Health & Welfare Committee  
The Honorable Frank A. Hoffmann, Chairman, House Health & Welfare Committee

**From:** Rebekah E. Gee, MD, MPH  
Secretary

*Approved for  
Cindy Rue*

**Re:** Second Report on Proposed Amendments to LAC 50:XXI.8105 – Home and Community-Based Services Waivers – Community Choices Waiver – Programmatic Allocation of Waiver Opportunities

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Office of Aging and Adult Services, submits its second report regarding the proposed Home and Community-Based Services Waivers – Community Choices Waiver – Programmatic Allocation of Waiver Opportunities rule amendment. A Notice of Intent on the proposed amendments was published in the March 20, 2019 issue of the *Louisiana Register* (LR 45:454). 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 March 20, 2019, Notice of Intent when it is published as a final rule in the June 20, 2019, issue of the *Louisiana Register*.

Should you have any questions or need additional information, please contact Kirsten Clebert, Policy Division Director, at (225) 219-1149.

**Cc:** Kirsten Clebert, Policy Division Director, Office of Aging and Adult Services  
Tara LeBlanc, Assistant Secretary, Office of Aging and Adult Services  
Jen Katzman, Deputy Medicaid Director  
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers  
Anita Dupuy, Legislative Liaison, Louisiana Department of Health  
Catherine Brindley, Editor, Louisiana Register, Office of the State Register

## **NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing  
and  
Office of Aging and Adult Services**

**Home and Community-Based Services Waivers  
Community Choices Waiver  
Programmatic Allocation of Waiver Opportunities  
(LAC 50:XXI.8105)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.8105 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 and the Office of Aging and Adult Services propose to amend the provisions governing the programmatic allocation of waiver opportunities in the Community Choices Waiver in order to give priority to individuals not receiving any other Medicaid home and community-based service.

### **Title 50**

#### **PUBLIC HEALTH-MEDICAL ASSISTANCE**

#### **Part XXI. Home and Community Based Services Waivers**

#### **Subpart 7. Community Choices Waiver**

#### **Chapter 81. General Provisions**

## 8105. Programmatic Allocation of Waiver Opportunities

A. ...

B. Community choices waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for community choices waiver opportunities, in the order listed:

1. - 4. ...

5. individuals who are not presently receiving home and community-based services (HCBS) under another ~~approved~~ Medicaid ~~waiver~~ program, including, but not limited to ~~the~~:

a. ~~adult day health care (ADHC) waiver~~ Program of All-Inclusive Care for the Elderly (PACE);

b. ~~new opportunities waiver (NOW)~~ long-term - personal care services (LT-PCS); and/or

c. ~~supports~~ any other 1915(c) waiver; and/or

d. ~~residential options waiver (ROW)~~; and Repealed.

B.6. - E.2.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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011), amended LR 39:319 (February 2013), LR 39:1778 (July 2013),

amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:1896 (October 2018), 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.

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 positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by making services more quickly available to individuals who receive no other home and community-based services.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it may allow working adults to devote more time to employment rather than having to work fewer hours or miss work in order to fulfill caretaker responsibilities.

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, no direct or indirect cost to the provider 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.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on April 29, 2019.

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 April 9, 2019. 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 April 25, 2019 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 Stanley Bordelon at (225) 219-3454 after April 9, 2019. 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.

Rebekah E. Gee MD, MPH

Secretary



**State of Louisiana**  
Louisiana Department of Health  
Office of the Secretary

May 10, 2019

**Via Statutorily Prescribed Email**

**To:** The Honorable Eric LaFleur, Chairman, Senate Finance Committee  
The Honorable Cameron Henry, Chairman, House Committee on Appropriations  
The Honorable Fred H. Mills, Jr. Chairman, Senate Health & Welfare Committee  
The Honorable Frank A. Hoffmann, Chairman, House Health & Welfare Committee

**From:** Rebekah E. Gee, MD, MPH  
Secretary

CR

**Re:** Second Report on Proposed Amendments to LAC 50:II.20026 – Nursing Facilities  
– Reimbursement Methodology

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Nursing Facilities – Reimbursement Methodology rule amendments. A Notice of Intent on the proposed amendments was published in the March 20, 2019, issue of the *Louisiana Register* (LR 45:456). 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. While no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted, technical changes were made to the Notice of Intent. The final rule will be published to reflect editorial changes to make subsection "D" an explanatory note predicated the effectiveness of the section on the approval of the Centers for Medicare and Medicaid Services. In §20026(A)(1), the term "other" was replaced by the more precise phrase, "future location used to operate John J. Hainkel, Jr. Home and Rehabilitation Center which has been."

Unless otherwise directed, the Department anticipates adopting the March 20, 2019, Notice of Intent when it is published as a final rule in the June 20, 2019, issue of the *Louisiana Register*.

Should you have any questions or need additional information, please contact Stephen R. Russo, Esq., Executive Counsel, at (225) 342-1115.

**Cc:** Jen Katzman, Deputy Medicaid Director  
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers

LAC 50:II.20026

May 10, 2019

Page 2

Tara LeBlanc, Assistant Secretary, Office of Aging and Adult Services  
Stephen R. Russo, Esq., Executive Counsel, Louisiana Department of Health  
Anita Dupuy, Legislative Liaison, Louisiana Department of Health  
Catherine Brindley, Editor, Louisiana Register, Office of the State Register

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## **NOTICE OF INTENT**

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

#### **Nursing Facilities Reimbursement Methodology (LAC 50:II.20026)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:II.20026 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 proposes to adopt a reimbursement methodology for a nursing facility that is operated by an entity that has a Cooperative Endeavor Agreement (CEA) with Louisiana State University (LSU) to conduct a geriatric nursing facility training program at the location of the current John J. Hainkel, Jr. Home and Rehabilitation Center, or any other location approved by the parties and the department.

### **Title 50**

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

#### **Chapter 200. Reimbursement Methodology**

#### **§20026. Geriatric Training Nursing Facility Reimbursement Rate**

A. Effective for dates of service on or after July 1, 2019, LDH shall provide a private nursing facility reimbursement rate of \$365.68 per resident per day to an entity that meets the following criteria:

1. the entity has a cooperative endeavor agreement (CEA) with Louisiana State University (LSU) to operate the current John J. Hainkel, Jr. Home and Rehabilitation Center or any other location approved by the parties and the department, as a geriatric training nursing facility.

B. The private nursing facility reimbursement rate established in Subsection A above is all-inclusive.

1. Add-ons, including, but not limited to, technology dependent care (TDC), nursing facility rehabilitation services and nursing facility complex care services add-ons shall not be permitted under this reimbursement rate.

C. Any nursing facility that meets the criteria set forth in Subsection A above shall file an annual cost report with LDH within five months following the end of the facility's fiscal year.

D. The provisions of this Rule shall be subject to approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) of a State Plan amendment authorizing such payment.

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 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.

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, no direct or indirect cost to the provider 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.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on April 29, 2019.

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 April 9, 2019. 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 April 25, 2019 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 Stanley Bordelon at (225) 219-3454 after April 9, 2019. 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.

Rebekah E. Gee MD, MPH

Secretary

## **NOTICE OF INTENT**

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

#### **Nursing Facilities Reimbursement Methodology (LAC 50:II.20026)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:II.20026 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 proposes to adopt a reimbursement methodology for a nursing facility that is operated by an entity that has a Cooperative Endeavor Agreement (CEA) with Louisiana State University (LSU) to conduct a geriatric nursing facility training program at the location of the current John J. Hainkel, Jr. Home and Rehabilitation Center, or any other location approved by the parties and the department.

### **Title 50**

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

#### **Chapter 200. Reimbursement Methodology**

#### **§20026. Geriatric Training Nursing Facility Reimbursement Rate**

NOTE: The provisions of this Section shall be subject to approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) of a State Plan amendment authorization such payment.

A. Effective for dates of service on or after July 1, 2019, LDH shall provide a private nursing facility reimbursement rate of \$365.68 per resident per day to an entity that meets the following criteria:

1. the entity has a cooperative endeavor agreement (CEA) with Louisiana State University (LSU) to operate the current John J. Hainkel, Jr. Home and Rehabilitation Center or any ~~other~~ future location used to operate John J. Hainkel, Jr. Home and Rehabilitation Center which has been approved by the parties and the department, as a geriatric training nursing facility.

B. The private nursing facility reimbursement rate established in Subsection A above is all-inclusive.

1. Add-ons, including, but not limited to, technology dependent care (TDC), nursing facility rehabilitation services and nursing facility complex care services add-ons shall not be permitted under this reimbursement rate.

C. Any nursing facility that meets the criteria set forth in Subsection A above shall file an annual cost report with LDH

within five months following the end of the facility's fiscal year.

~~D. The provisions of this Rule shall be subject to approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) of a State Plan amendment authorizing such payment.~~

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 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.

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, no direct or indirect cost to the provider 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.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on April 29, 2019.

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Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on April 9, 2019. 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 April 25, 2019 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 Stanley Bordelon at (225) 219-3454 after April 9, 2019. 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.

Rebekah E. Gee MD, MPH

Secretary