



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

June 10, 2019

**Via Statutorily Prescribed Email**

**To:** The Honorable John Alario, President, Louisiana Senate  
The Honorable Taylor Barras, Speaker, Louisiana House of Representatives  
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 *Candy R. R. R.*

**Re:** Second Report on Proposed Amendments to LAC 50:XV.Chapter 73 – Early and Periodic Screening, Diagnosis and Treatment Personal Care Services

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Early and Periodic Screening Diagnosis and Treatment Personal Care Services rule amendment. A Notice of Intent on the proposed amendments was published in the April 20, 2019 issue of the *Louisiana Register* (LR 45:606). 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 April 20, 2019, Notice of Intent when it is published as a final rule in the July 20, 2019, issue of the *Louisiana Register*.

Should you have any questions or need additional information, please contact Jen Katzman, Deputy Medicaid Director, at [Jennifer.Katzman@la.gov](mailto:Jennifer.Katzman@la.gov).

**Cc:** Jen Katzman, Deputy Medicaid Director  
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers  
Irma Gauthier, Medicaid Program Manager 1B, Prog. Operations & Compliance  
Anita Dupuy, Legislative Liaison, Louisiana Department of Health

**NOTICE OF INTENT**

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

**Early and Periodic Screening, Diagnosis and Treatment  
Personal Care Services  
(LAC 50:XV.Chapter 73)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.Chapter 73 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 amend the provisions governing personal care services (PCS) in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program in order to clarify these provisions and update requirements relative to utilization of an electronic visit verification system, billable units, and delivery of PCS.

**Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 5. Early and Periodic Screening, Diagnosis, and  
Treatment**

**Chapter 73. Personal Care Services**

**§7301. Introduction**

A. Early Periodic Screening, Diagnosis and Treatment

(EPSDT) Personal Care Services (PCS)-

1. Personal Care Services are services which prevent institutionalization and enable the beneficiary to live in the community. PCS are tasks which are medically necessary ~~as they pertain to an EPSDT eligible's physical requirements~~ when physical or cognitive limitations due to illness or injury necessitate assistance with ~~eating, bathing, dressing, personal hygiene, bladder or bowel requirements;~~ :

- a. eating;
- b. toileting;
- c. bathing;
- d. bed mobility;
- e. transferring;
- f. dressing;
- g. locomotion;
- h. personal hygiene; or
- i. bladder or bowel requirements.

2. ~~services which prevent institutionalization and enable the recipient to be treated on an outpatient basis rather than an inpatient basis to the extent that services on an outpatient basis are projected to be more cost effective than services provided on an inpatient basis.~~ 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, Office of the Secretary, Bureau of Health Services Financing, LR 21:947 (September 1995), repromulgated for LAC codification, LR 29:177 (February 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7303. Services**

A. The ~~recipient~~ beneficiary shall be allowed the freedom of choice to select an EPSDT PCS provider.

B. EPSDT personal care services include:

1. basic personal care, including toileting, ~~and grooming activities, including bathing, care of the hair, and~~ assistance with ~~clothing~~ dressing;

2. assistance with bladder and/or bowel requirements or problems, including helping the ~~elient~~ beneficiary to and from the bathroom or assisting the ~~elient~~ beneficiary with bedpan routines, but excluding catheterization;

3. assistance with eating and food, nutrition, and diet activities, including preparation of meals for the ~~recipient~~ beneficiary only;

4. performance of incidental household services essential to the ~~elient's~~ beneficiary's health and comfort in



her/his home. Examples of such activities are changing and washing bed linens and rearranging furniture to enable the ~~recipient~~ beneficiary to move about more easily in his/her own home;

5. accompanying, not transporting the ~~recipient~~ beneficiary to and from his/her physician and/or other medical ~~facility~~ appointments for necessary medical services; and

6. ~~EPSDT personal care services are not to be provided to meet childcare needs nor as a substitute for the parent in the absence of the parent;~~ assistance with locomotion in their place of service, while in bed or from one surface to another. Assisting the beneficiary with transferring and bed mobility.

7. ~~personal care services (PCS) are not allowable for the purpose of providing respite care to the primary caregiver;~~

~~8. EPSDT personal care services provided in an educational setting shall not be reimbursed if these services duplicate services that are provided by or must be provided by the Department of Education;~~ 7. - 8. Repealed.

#### C. Intent of Services

1. EPSDT PCS shall not be provided to meet childcare needs nor as a substitute for the parent or guardian in the absence of the parent or guardian.

2. EPSDT PCS shall not be used to provide respite care for the primary caregiver.

3. EPSDT PCS provided in an educational setting shall not be reimbursed if these services duplicate services that are provided by or shall be provided by the Department of Education.

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 21:947 (September 1995), repromulgated for LAC codification, LR 29:177 (February 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7305. ~~Recipient~~ Beneficiary Qualifications**

A. Conditions for Provision of EPSDT Personal Care Services

1. The person must be a categorically-eligible Medicaid ~~recipient~~ beneficiary birth through 20 years of age (EPSDT eligible) and have been prescribed ~~EPSDT PCS as~~ medically necessary, age appropriate EPSDT PCS by a practitioner (physician, advance practice nurse, or physician assistant). ~~To establish medical necessity the parent or guardian must be~~

~~physically unable to provide personal care services to the child.~~

2. An EPSDT-eligible ~~must~~ shall meet medical necessity criteria as established by the Bureau of Health Services Financing (BHSF) which shall be based on ~~criteria equivalent to at least an Intermediate Care Facility I (ICF-1) level of care; and be impaired~~ functional and medical eligibility and impairment in at least two activities of daily living ~~tasks~~ (ADL), as determined by BHSF or its designee.

3. ~~When determining whether a recipient qualifies for EPSDT PCS, consideration must be given not only to the type of services needed, but also the availability of family members and/or friends who can aid in providing such~~ shall be prescribed if medically necessary by the beneficiary's attending practitioner initially and every 180 days thereafter (or rolling six months), and when changes in the plan of care occur. EPSDT PCS are not to function as a substitute for childcare arrangements. The plan of care shall be acceptable only after the practitioner signs and dates the completed form. The practitioner's signature must be an original signature and not a rubber stamp.

4. ~~Early and periodic screening, diagnosis, and treatment personal care services must be prescribed by the recipient's attending physician initially and every 180 days~~



~~thereafter (or rolling 6 months), and when changes in the plan of care occur. The plan of care shall be acceptable for submission to BHSF only after the physician signs and dates the completed form. The physician's signature must be an original signature and not a rubber stamp.~~ 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, Office of the Secretary, Bureau of Health Services Financing, LR 21:947 (September 1995), repromulgated for LAC codification, LR 29:177 (February 2003), amended LR 30:253 (February 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:2259 (November 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7307. Prior Authorization**

A. EPSDT personal care services ~~must be~~ are subject to prior ~~authorized~~ authorization (PA) by ~~the~~ BHSF or its designee. A face-to-face medical assessment shall be completed by the ~~physician~~ practitioner. The ~~recipient's~~ beneficiary's choice of a personal care services provider may assist the ~~physician~~ practitioner in developing a plan of care which shall be submitted by the ~~physician~~ practitioner for review/approval by BHSF or its designee. The plan of care ~~must~~ shall specify:



1. the specific personal care service(s) to be provided (i.e., activities of daily living for which assistance is needed); and

2. ...

B. Dates of ~~care~~-service not included in the plan of care or provided prior to approval of the plan of care by BHSF or its designee are not reimbursable. The ~~recipient's~~-beneficiary's attending ~~physician~~-practitioner shall review and/or modify the plan of care and sign off on it prior to the plan of care being submitted to BHSF or its designee. A copy of the ~~physician's~~ practitioner's prescription ~~or referral~~ for EPSDT ~~PCA~~-PCS services ~~must~~shall be included with the plan of care at the time of submission for prior authorization and may not be dated after delivery of services has started. A copy of the prescription shall be retained in the ~~personal care services~~-EPSDT PCS provider's files.

C. A new plan of care ~~must~~-shall be submitted at least every 180 days (rolling six months) with approval by the ~~recipient's~~-beneficiary's attending ~~physician~~practitioner. The plan of care ~~must~~-shall reassess the patient's need for EPSDT ~~PCS~~-services, including any updates to information which has changed since the previous assessment was conducted (with explanation of when and why the change(s) occurred).

D. Amendments or changes in the plan of care ~~should~~ shall be submitted as they occur and shall be treated as a new plan of care which begins a new six-month service period. Revisions of the plan of care may be necessary because of changes that occur in the ~~patient's~~ beneficiary's medical condition which warrant an additional type of service, ~~an increase~~ a change in frequency of service or ~~an increase~~ a change in duration of service.

Documentation for a revised plan of care is the same as for a new plan of care. Both a new "start date" and "reassessment date" ~~must~~ shall be established at the time of reassessment. The EPSDT PCS provider may not initiate services or changes in services under the plan of care prior to approval by BHSF or its designee.

E. ~~Recipients~~ Beneficiaries who have been designated by ~~DHH~~ BHSF as chronic needs ~~cases~~ are exempt from the standard prior authorization process. Although a new request for prior authorization ~~must~~ shall still be submitted every 180 days, the EPSDT PCS provider shall only be required to submit a PA request form accompanied by a statement from a ~~physician~~ practitioner verifying that the ~~recipient's~~ beneficiary's condition has not improved and the services currently approved must be continued. Only ~~DHH~~ BHSF or its designee can grant the designation of a chronic needs case to a ~~recipient~~ beneficiary.

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 21:947 (September 1995), repromulgated for LAC codification, LR 29:177 (February 2003), amended LR 30:253 (February 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7309. Place of Service**

A. EPSDT ~~personal care services~~ PCS ~~must~~ shall be provided if medically necessary in the ~~recipient's~~ beneficiary's home or in another location ~~if medically necessary to be~~ outside of the ~~recipient's~~ beneficiary's home. The ~~recipient's~~ beneficiary's home is defined as the ~~recipient's~~ beneficiary's own ~~dwelling~~ home, which includes the following:

1. - 3. ...

4. a foster home; or

5. a ~~substitute family home~~ supervised living facility; ~~or~~ .

~~6. a supervised living facility.~~

~~a. Institutions such as a hospital, institution for mental diseases, nursing facility, intermediate care facility for the mentally retarded or residential treatment center are not considered a recipient's home.~~ 6. - 6.a. Repealed.



B. Institutions such as hospitals, institutions for mental disease, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, or residential treatment centers are not considered a beneficiary's home.

C. Medicaid prohibits multiple professional disciplines from being present in the beneficiary's residential setting at the same time. However, multiple professionals may provide services to multiple beneficiaries in the same residential setting when it is medically necessary. This includes but is not limited to nurses, home health aides, and therapists. BHSF or its designee will determine medical necessity for fee-for-service beneficiaries.

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 21:948 (September 1995), repromulgated for LAC codification, LR 29:178 (February 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7311. Service Limits**

A. EPSDT ~~personal care services~~PCS are not subject to service limits. The units of service approved shall be based on the physical requirements of the ~~recipient~~beneficiary and



medical necessity for the covered services ~~in the EPSDT-PCS~~  
~~Program.~~

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 21:947 (September 1995) repromulgated for  
LAC codification, LR 29:178 (February 2003), amended LR 30:253  
(February 2004), amended by the Department of Health, Bureau of  
Health Services Financing, LR 45:

**§7313. Standards for Payment**

A. EPSDT ~~personal care services~~ PCS ~~may~~ shall only be  
provided ~~only~~ to EPSDT ~~eligibles~~ beneficiaries and only by a  
staff member of a licensed personal care services agency  
enrolled as a Medicaid provider. A copy of the current PCS  
license must accompany the Medicaid application for enrollment  
as a PCS provider and ~~additional~~ copies of current licenses  
shall be submitted to Provider Enrollment thereafter as they are  
issued, for inclusion in the enrollment record. The provider's  
record ~~must~~ shall always include a current PCS license at all  
times. ~~Enrollment~~ Medicaid enrollment is limited to providers  
located in Louisiana and certain out-of-state providers located  
only in the trade areas of ~~states bordering Louisiana~~ (Arkansas,  
Mississippi, and Texas).

B. The unit of service billed by EPSDT PCS providers shall be ~~one-half hour~~one-quarter hour, exclusive of travel time to arrive at the ~~recipient's~~beneficiary's home. The entire ~~30~~15 minutes of the unit of time shall have been spent providing services in order to bill a unit.

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 21:947 (September 1995), repromulgated for LAC codification, LR 29:178 (February 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7315. Provider Qualifications**

A. Personal care services ~~must~~shall be provided by a licensed personal care services agency which is duly enrolled as a Medicaid provider. Staff assigned to provide personal care services to a beneficiary shall not be a member of the ~~recipient's~~beneficiary's immediate family. ~~Immediate family includes~~is defined as the father, mother, sister, brother, spouse, child, grandparent, in-law, or any individual acting as parent or guardian of the ~~recipient~~beneficiary. Personal care services may be provided by a person of a degree of relationship to the ~~recipient~~beneficiary other than immediate family, only

if the relative is not living in the ~~recipient's~~ beneficiary's home, or, if she/he is living in the ~~recipient's~~ beneficiary's home solely because her/his presence in the home is necessitated by the amount of care required by the ~~recipient~~ beneficiary.

B. An unrelated staff member of a licensed personal care services provider may not live in the same home as the beneficiary.

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 21:947 (September 1995), repromulgated for LAC codification, LR 29:178 (February 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

#### **§7317. Provider Responsibilities**

A. The licensed PCS agency is responsible for ensuring that all ~~personal care individuals~~ direct service workers providing ~~services~~ EPSDT PCS meet all training requirements applicable under state law and regulations. The ~~personal care services staff member~~ direct service worker must successfully complete the applicable examination for certification for PCS. Documentation of the ~~personal care staff member's~~ direct service

worker's completion of all applicable requirements shall be maintained by the ~~personal care services~~EPSDT PCS provider.

B. The agency shall use an electronic visit verification (EVV) system for time and attendance tracking and billing for EPSDT PCS.

1. EPSDT PCS providers identified by BHSF shall use:

a. the (EVV) system designated by the department; or

b. an alternate system that:

i. has successfully passed the data integration process to connect to the designated EVV system; and

ii. is approved by the department.

2. Reimbursement for services may be withheld or denied if an EPSDT PCS provider:

a. fails to use the EVV system; or

b. uses the system not in compliance with Medicaid's policies and procedures for EVV.

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 21:947 (September 1995), repromulgated for LAC codification, LR 29:178 (February 2003), amended by the



Department of Health, Bureau of Health Services Financing, LR  
45:

**§7319. ~~Agency~~ EPSDT PCS Provider Responsibilities**

A. Documentation

1. Documentation for EPSDT PCS provided shall include at a minimum, the following:
  - a. ...
  - b. daily notes by PCS provider denoting date of service, ~~and~~ services provided (checklist is adequate);
  - c. - d. ...
  - e. health condition of ~~recipient~~ beneficiary;
  - f. - h. ...
2. There ~~must~~ shall be a clear audit trail between:
  - a. the prescribing ~~physician~~ practitioner;
  - b. ...
  - c. the person providing the personal care services to the ~~recipient~~ beneficiary; and
  - d. ...

B. Agencies providing EPSDT PCS shall conform to all applicable Medicaid regulations as well as all applicable laws and regulations by federal, state, and local governmental entities ~~regarding~~ including, but not limited to:

1. - 6. ...
7. Workman's Compensation; and

8. ...

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 21:947 (September 1995), repromulgated for LAC codification, LR 29:178 (February 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7321. Reimbursement**

A. Reimbursement for EPSDT ~~personal care services~~PCS shall be the lesser of billed charges or the maximum unit rate set by the department. The maximum rate is a flat rate for each approved unit of service provided to the ~~recipient~~beneficiary. This rate shall be adjusted as necessary by the department.

1. One quarter hour (15 minutes) is the standard unit of service, exclusive of travel time to arrive at the ~~recipient's~~beneficiary's home.

2. ...

B. Personal Care Workers Wage Enhancement

1. ~~Effective February 9, 2007, an~~ An hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid ~~recipients~~beneficiaries.

a. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage enhancement.

~~2. Providers shall be required to submit a certified wage register to the Department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:~~

~~\_\_\_\_\_ a. gross wage paid to the personal care worker(s);~~

~~\_\_\_\_\_ b. total number of direct support hours worked;~~  
~~and~~

~~\_\_\_\_\_ c. the amount paid in employee benefits.~~

~~\_\_\_\_\_ 3. A separate report shall be submitted for paid overtime.~~

~~\_\_\_\_\_ 4. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.~~

~~5. The provider shall submit a report, according to the Department's specifications, that will be used to measure the effectiveness of the wage enhancement.~~

~~6. The wage enhancement payments reimbursed to providers shall be subject to audit by the Department.~~

~~7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:~~

~~a. forfeiture of eligibility for wage enhancement payments;~~

~~b. recoupment of previous wage enhancement payments;~~

~~c. Medicaid fraud charges; and~~

~~d. disenrollment in the Medicaid Program.~~2. -

7.d. 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, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:2202 (October 2007), repromulgated LR 33:2425 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2561 (November 2010),



amended by the Department of Health, Bureau of Health Services Financing, LR 45:

**§7323. Nonreimbursable Services**

A. The following services are not appropriate for personal care and are not reimbursable as EPSDT personal care services:

1. - 4. ...

5. administration of medicine (~~as opposed to assisting with self-administered medication for an~~ EPSDT PCS eligibles direct service worker may only remind/prompt about self-administered medication to an EPSDT eligible beneficiary who is over the age of 18 ~~years of age~~);

6. cleaning of ~~floor and furniture~~ the home in an area not occupied by the ~~recipient~~ beneficiary;

a. ~~Example: cleaning entire living area if the recipient occupies only one room~~ Repealed.

7. laundry, other than that incidental to the care of the ~~recipient~~ beneficiary;

a. ~~Example: laundering of clothing and bedding for the entire household, as opposed to simple laundering of the recipient's clothing or bedding~~ Repealed.

EXAMPLE: Laundering of clothing and bedding for the entire household, as opposed to simple laundering of the beneficiary's clothing or bedding.

8. shopping for groceries or household items other than items required specifically for the health and maintenance of the ~~recipient~~beneficiary, and not for items used by the rest of the household;

9. ...

10. teaching a family member or friend how to care for a ~~patient~~beneficiary who requires frequent changes of clothing or linens due to total or partial incontinence for which no bowel or bladder training program for the patient is possible;

11. - 15. ...

16. specialized aide procedures such as:

a. rehabilitation of the ~~patient~~beneficiary (exercise or performance of simple procedures as an extension of physical therapy services);

b. measuring/recording ~~patient~~the beneficiary's vital signs (temperature, pulse, respirations and/or blood pressure, etc.) or intake/output of fluids;

c. ...

d. special procedures such as:

i. - viii. ...

ix. weight measurement; and

x. ...

17. - 29. ...

~~B. EPSDT personal care services provided to meet childcare needs or as a substitute for the parent in the absence of the parent shall not be reimbursed.~~

~~C. EPSDT personal care services provided for the purpose of providing respite to the primary caregiver shall not be reimbursed.~~

~~D. EPSDT personal care services provided in an education setting shall not be reimbursed if these services duplicate services that are provided by or must be provided by the Department of Education.~~ B. - D. 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, Office of the Secretary, Bureau of Health Services Financing, LR 21:947 (September 1995), repromulgated for LAC codification, LR 29:179 (February 2003), amended 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 will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by helping to ensure that participants receive the services as described in their plan of care.

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, 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 May 30, 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 May 10, 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 May 30, 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 May 10, 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

June 10, 2019

**Via Statutorily Prescribed Email**

**To:** The Honorable John Alario, President, Louisiana Senate  
The Honorable Taylor Barras, Speaker, Louisiana House of Representatives  
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 *Cindy River*

**Re:** Second Report on Proposed Amendments to LAC 50:XXIX.Chapter 11 – Pharmacy Benefits Management Program State Supplemental Rebate Agreement Program

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Pharmacy Benefits Management Program State Supplemental Rebate Agreement Program rule amendment. A Notice of Intent on the proposed amendments was published in the April 20, 2019 issue of the *Louisiana Register* (LR 45:606). 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 April 20, 2019, Notice of Intent when it is published as a final rule in the July 20, 2019, issue of the *Louisiana Register*.

Should you have any questions or need additional information, please contact Jen Katzman, Deputy Medicaid Director, at [Jennifer.Katzman@la.gov](mailto:Jennifer.Katzman@la.gov).

**Cc:** Jen Katzman, Deputy Medicaid Director  
Veronica Dent, Medicaid Program Manager 1B, Policy and Waivers  
Irma Gauthier, Medicaid Program Manager 1B, Prog. Operations & Compliance  
Anita Dupuy, Legislative Liaison, Louisiana Department of Health

## **NOTICE OF INTENT**

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

**Pharmacy Benefits Management Program  
State Supplemental Rebate Agreement Program  
(LAC 50:XXIX.Chapter 11)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.Chapter 11 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 established provisions in the Pharmacy Benefits Management Program governing the Medicaid Program's participation in The Optimal PDL \$olution (TOP\$) State Supplemental Rebate Agreement Program (Louisiana Register, Volume 43, Number 5). The department now proposes to amend the provisions governing the State Supplemental Rebate Agreement Program in order to remove the requirement for participation in a specific supplemental rebate agreement.

### **Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE  
Part XXIX. Pharmacy**

**Chapter 11. State Supplemental Rebate Agreement Program**

**§1101. General Provisions**



A. ~~Effective October 1, 2013, the Department of Health, Bureau of Health Services Financing hereby establishes provisions for participation in The Optimal PDL Solution (TOP\$) State Supplemental Rebate Agreement (SRA) Program. TOP\$ is a multi-state Medicaid state supplemental drug rebate pooling initiative approved by the U.S. Department of Health and Human Services, The Centers for Medicare and Medicaid Services and administered by Provider Synergies, L.L.C/Magellan Medicaid Administration. The purpose of this program is to allow states the opportunity to leverage their approved LDH to enter into state supplemental rebate agreements with pharmaceutical purchasing power as a group to achieve more manufacturer(s). LDH may enter into an agreement with a pharmaceutical manufacturer to obtain a rebate(s) in addition to federal rebates pursuant to 42 U.S.C. 1396r. Participation by a pharmaceutical manufacturer in a state supplemental rebates and discounts from prescription drug companies than could be achieved independently~~rebate agreement with the department is voluntary.

B. ~~Pursuant to R.S. 46:153.3, the department shall enter into a contractual agreement with Provider Synergies to participate in TOP\$. Provider Synergies/Magellan Medicaid Administration will act on the department's behalf to provide the necessary administration services relative to this agreement~~

~~for the provision of state supplemental drug rebate contracting and preferred drug list administration services.~~ 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, Bureau of Health Services Financing, LR 43:966 (May 2017), amended 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 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, 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 May 30, 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 May 10, 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 May 30, 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 May 10, 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