



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:I.2111 and 3509 – Dental Benefit Plan Manager and  
Healthy Louisiana Managed Care Organization Medical Loss Ratio

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Dental Benefit Plan Manager and Healthy Louisiana Managed Care Organization Medical Loss Ratio, LAC 50:I.2111 and 3509.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1310). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Steve Annison, [Steve.Annison@la.gov](mailto:Steve.Annison@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Bogdon Constantin, Medicaid Program Manager, LDH  
Kolynda Parker, Medicaid Deputy Director, LDH  
Brandon Bueche, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part I. Administration**  
**Subpart 3. Managed Care for Physical and Behavioral Health**  
**Chapter 21. Dental Benefits Prepaid Ambulatory Health Plan**

**§2111. Payment Methodology**

A. - I. ...

J. A DBPM shall have a medical loss ratio (MLR) for each MLR reporting year, which shall align with the capitation rating period, except in circumstances in which the MLR reporting period must be revised to align to a CMS-approved capitation rating period.

1. - 4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:788 (April 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 46:953 (July 2020), LR 47:369 (March 2021), LR 49:

**Chapter 35. Managed Care Organization Participation Criteria**

**§3509. Reimbursement Methodology**

A. - E. ...

F. An MCO shall have a medical loss ratio (MLR) for each MLR reporting year, which shall align with the capitation rating period, except in circumstances in which the MLR reporting period must be revised to align to a CMS-approved capitation rating period.

1. - 2. ...

3. An MLR shall be reported in the aggregate, including all services provided under the contract, unless the department requires separate reporting and a separate MLR calculation for specific populations.

F.3.a. - N.2.a. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1587 (June 2011), amended LR 39:92 (January 2013), LR 41:937 (May 2015), LR 41:2367 (November 2015), LR 42:755 (May 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1771 (December 2019), 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 or 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

**NOTICE OF INTENT**

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

**Dental Benefit Plan Manager and Healthy Louisiana  
Managed Care Organization Medical Loss Ratio  
(LAC 50:I.2111 and 3509)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.2111 and §3509 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.

Title 42, Part 438.74 of the Code of Federal Regulations 438.74 requires the Department of Health to report medical loss ratio information for the dental benefits prepaid ambulatory health plan and the Healthy Louisiana managed care organizations annually. In compliance with 42 CFR 438.74, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing managed care for physical and behavioral health in order to align the MLR period for the dental benefit plan manager and the Healthy Louisiana managed care organizations with the capitation rating period for the purposes of required reporting (*Louisiana Register*, Volume 49, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2023 Emergency Rule.

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, 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.

#### **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 August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Dental Benefit Plan Manager and Healthy Louisiana Managed Care Organization Medical Loss Ratio**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the

federal share of the promulgation costs for FY 23-24. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule continues the provisions of the July 1, 2023 Emergency Rule, which amended the provisions governing managed care for physical and behavioral health in order to align the medical loss ratio period for the dental benefit plan manager and the Healthy Louisiana managed care organizations with the capitation rating period for the purposes of required reporting, in compliance with 42 CFR 438.74. It is anticipated that implementation of this proposed rule will not result in costs to dental or managed care providers and will have no impact on small businesses in FY 23-24, FY 24-25, and FY 25-26.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#020

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



## State of Louisiana

Louisiana Department of Health  
Office of the Secretary

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 48:I.12533 – Facility Need Review – Exception for Bed Approvals

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Facility Need Review – Exception for Bed Approvals, LAC 48:I.12533.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1311). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Cynthia York, [Cynthia.York@la.gov](mailto:Cynthia.York@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Tasheka Dukes, HSS Assistant Secretary, LDH  
Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

#### **Facility Need Review Exception Criteria for Bed Approvals (LAC 48:I.12533)**

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.12533 as authorized by R.S. 36:254 and 40:2116. 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 facility need review approvals of licensed and Medicaid certified facility beds in order to prevent the expiration of approvals for nursing facilities, intermediate care facilities for persons with developmental disabilities, and adult residential care providers with inactivated licenses as a result of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or 29:766 (*Louisiana Register*, Volume 49, Number 6). This proposed Rule is being promulgated to continue the provisions of the June 9, 2023 Emergency Rule.

#### **Title 48**

### **PUBLIC HEALTH—GENERAL**

#### **Part I. General Administration**

#### **Subpart 5. Health Planning**

#### **Chapter 125. Facility Need Review**

#### **Subchapter F. Exception Criteria for Bed Approvals**

#### **§12533. Declared Disasters and Emergency Events**

A. The facility need review bed approvals for a licensed and Medicaid certified nursing facility, ICF/DD, or for a licensed adult residential care provider (ARCP) located in an area or areas which have been affected by an executive order

or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 shall remain in effect and shall not be terminated, revoked or considered to have expired for a period not to exceed two years for a nursing facility or ARCP, and one year for an ICF/DD, following the original date of such executive order or proclamation, provided that the following conditions are met:

1. the nursing facility, ICF/DD, or ARCP shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the nursing facility, ICF/DD, or ARCP has experienced an interruption in the provision of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. - c. ...

\*\*\*

2. A nursing facility, ICF/DD, or ARCP resumes operating as a nursing facility, ICF/DD, or ARCP in the same service area, within two years for a nursing facility or ARCP and within one year for an ICF/DD, of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766; and

3. ...

B. For good cause shown, the department may, in its sole discretion, grant two extensions of six months each, for a total of twelve additional months, to a facility described in Subsection A of this Section, during which time the facility need review approvals shall remain in effect and not be terminated, revoked, or considered to have expired, provided that the following conditions are met:

1. A nursing facility, ICF/DD, or ARCP submits a written extension request to the department 30 days prior to the expiration of the original time period established in Subsection A or the expiration of the first extension granted under these provisions.

a. The written extension request shall include evidence of progress in re-opening, including construction and expenditures on the repairs to or replacement of the facility.

b. The written extension request shall include an estimated re-opening date for the facility.

2. The facility resumes operating as a nursing facility, ICF/DD, ARCP in the same service area, within the time period of the extension(s).

3. The facility continues to submit the required documentation and information to the department.

C. The provisions of this Section shall not apply to:

1. a nursing facility, ICF/DD, or ARCP which has voluntarily surrendered its facility need review bed approval; or

2. a nursing facility, ICF/DD, or ARCP which fails to resume operations as a nursing facility, ICF/DD, or ARCP in the same service area, within two years for a nursing facility or ARCP and within one year for an ICF/DD, or within the deadlines of any extensions granted thereto, of the original executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766.

D. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the facility need review bed approvals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2621 (December 2008), amended LR 35:2439 (November 2009), LR 39:1469 (June 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **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, 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.

#### **Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Facility Need Review  
Exception Criteria for Bed Approvals**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$756 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections as this measure has no impact on licensing fees.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR  
NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule continues the provisions of the June 9, 2023 Emergency Rule, which amended the provisions governing facility need review approvals of licensed and Medicaid certified facility beds in order to prevent the expiration of approvals for nursing facilities, intermediate care facilities for persons with developmental disabilities, and adult residential care providers with inactivated licenses as a result of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or 29:766. It is anticipated that implementation of this proposed rule will not result in costs to these providers for FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by allowing those with inactivated licenses as a result of executive orders or proclamations of emergency or disaster to retain facility need approval for licensed and Medicaid certified beds.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2307#021

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:XV.20301 – Health Services for American Indians – 638 Facilities

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Health Services for American Indians – 638 Facilities, LAC 50:XV.20301.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1313). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Irma Gauthier, [Irma.Gauthier2@la.gov](mailto:Irma.Gauthier2@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Kolynda Parker, Medicaid Deputy Director, LDH  
Brandon Bueche, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register



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 Health Services for American Indians in order to align the on-site requirements for physicians in tribally operated 638 facilities with the regulations at 42 CFR 440.90 and §1905(a)(9) of the Social Security Act.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 15. Health Services for American Indians**

**Chapter 203. Provider Participation**

**§20301. “638” Facilities**

A. - A.3. ...

B. A “638” facility must:

1. - 2. ...

3. comply with the Medicaid rules and regulations governing those services included in the facility’s encounter rate;

4. ...

5. have a physician affiliated with the clinic that must spend as much time in the facility as is necessary to ensure that patients are receiving services in a safe and efficient manner in accordance with accepted standards of medical, dental, and behavioral health practice, and other health care professionals available as needed.

**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 31:2029 (August 2005), amended by the Department of Health, Bureau of Health Services Financing, 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 or 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 a positive impact on small businesses since clinics are no longer required to staff a physician on-site at least 20 hours per week during normal business hours.

**Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana

**NOTICE OF INTENT**

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

Health Services for American Indians  
638 Facilities  
(LAC 50:XV.20301)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.20301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act (SSA). This proposed Rule is promulgated in accordance with the

Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since clinics are no longer required to staff a physician on-site at least 20 hours per week during normal business hours.

#### **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 August 29, 2023.

#### **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 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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Health Services for American Indians 638 Facilities**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing in order to align on-site requirements for physicians in tribally operated 638 facilities with the regulations at 42 CFR 440.90 and §1905(a)(9) of the Social Security Act. The proposed rule removes the requirement that the 638 facility have a physician

on-site at least 20 hour per week during normal business hours, as this is not required for other Medicaid-enrolled clinics. Implementation of this proposed rule will not result in costs to providers and small businesses in FY 23-24, FY 24-25, and FY 25-26, and will be beneficial by aligning the administrative rule with the federal regulations governing these clinics.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#022

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:XXI.8501 – Home and Community-Based Services Waivers –  
Community Choices Waiver Self-Direction Initiative

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Home and Community-Based Services Waivers – Community Choices Waiver Self-Direction Initiative, LAC 50:XXI.8501.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1314). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Layne Janet, [Layne.Janet@la.gov](mailto:Layne.Janet@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Melinda Richard, OAAS Assistant Secretary, LDH  
Kirsten Clebert, OAAS Division Director, LDH  
Brian Bennett, Medicaid Program Manager, LDH  
Amanda Daigre, Medicaid Program Manager, LDH  
Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
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 Self-Direction Initiative (LAC 50:XXI.8501)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.8501 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 Community Choices Waiver (CCW) self-direction initiative allows participants to coordinate the delivery of personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider. The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which amended the provisions governing the CCW self-direction initiative in order to remove the specific age requirement for employees under the self-direction service option and stipulate that these providers must meet the minimum age requirement per LAC 48:I.Chapter 92 (*Louisiana Register*, Volume 49, Number 6). This proposed Rule is being promulgated to continue the provisions of the June 9, 2023 Emergency Rule.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers**

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

##### **Chapter 85. Self-Direction Initiative**

##### **§8501. Self-Direction Service Option**

A. - C.2.d.vi. ...

D. Employee Qualifications. All employees under the self-direction option must:

1. meet the minimum age requirement per LAC 48:I.Chapter 92;

2. - 3. ...

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 37:3523 (December 2011), amended LR 39:321 (February 2013), LR 39:1779 (July 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services. LR 44:1900 (October 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 or 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 a positive impact on small businesses by aligning the age requirements for employees under the self-direction service option with the licensing provisions for providers of these services.

#### **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 to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, but may have a positive impact on the provider's qualifications and ability to provide the same level of service as described in HCR 170, since it aligns the age requirements for employees under the self-direction service option with the licensing provisions for providers of these services.

#### **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 August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home and Community-Based Services Waivers—Community Choices Waiver Self-Direction Initiative**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule continues the provisions of the June 9, 2023 Emergency Rule, which amended the provisions governing the Community Choice Waiver (CCW) self-direction initiative in order to remove the specific age requirement for employees under the self-direction service option and stipulate that these providers must meet the minimum age requirement as per the licensing provisions of Chapter 92 in Title 48 of the *Louisiana Administrative Code*. Implementation of this proposed rule is not anticipated to result in costs to providers of CCW services or small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the age requirements for employees under the self-direction service option align with the licensing provisions for providers of these services.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#023

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:XXI.16501 – Home and Community-Based Services  
Waivers – Residential Options Waiver Self-Direction Initiative

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Home and Community-Based Services Waivers – Residential Options Waiver Self-Direction Initiative, LAC 50:XXI.16501.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1316). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Julie Foster Hagan, [Julie.Hagan@la.gov](mailto:Julie.Hagan@la.gov), and Erin Downing, [Erin.Downing@la.gov](mailto:Erin.Downing@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Brian Bennett, Medicaid Program Manager, LDH  
Tracy Barker, Medicaid Program Manager, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## NOTICE OF INTENT

**Department of Health  
Bureau of Health Services Financing  
and  
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers  
Residential Options Waiver  
Self-Direction Initiative  
(LAC 50:XXI.16501)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.16501 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 Residential Options Waiver (ROW) self-direction initiative allows beneficiaries to exercise employer authority in the delivery of authorized community living supports under the self-direction service option. The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the ROW self-direction initiative in order to remove specific requirements for employees of beneficiaries in the self-direction service option and stipulate that these providers must meet the qualifications for furnishing personal care services as set forth in LAC 48:I.Chapter 92 (*Louisiana Register*, Volume 49, Number 6). This proposed Rule is being promulgated to continue the provisions of the June 9, 2023 Emergency Rule.

### Title 50

## PUBLIC HEALTH—MEDICAL ASSISTANCE

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

#### Subpart 13. Residential Options Waiver

#### Chapter 165. Self-Direction Initiative

#### §16501. Self-Direction Service Option

##### A. - D.3....

E. Employees of beneficiaries in the self-direction service option are not employees of the fiscal agent or the department.

1. Employee Qualifications. All employees under the self-direction option must meet the qualifications for furnishing personal care services as set forth in LAC 48:I.Chapter 92.

a - c. Repealed.

##### F. ...

**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 for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2167 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 47:1525 (October 2021), LR 48:1572 (June 2022), 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 or 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 a positive impact on small businesses by aligning the requirements for employees of beneficiaries in the self-direction service option with the licensing provisions for providers of personal care services.

#### 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 to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, but may have a positive impact on the provider's ability to provide the same level of service as described in HCR 170, since it aligns the requirements for employees of beneficiaries in the self-direction service option with the licensing provisions for providers of personal care services.

#### 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 August 29, 2023.

#### 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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Home and Community-Based Services  
Waivers—Residential Options Waiver  
Self-Direction Initiative**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR  
NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule continues the provisions of the June 9, 2023 Emergency Rule, which amended the provisions governing the Residential Options Waiver (ROW) self-direction initiative in order to remove specific requirements for employees of beneficiaries in the self-direction service option and stipulate that these providers must meet the qualifications for furnishing personal care services as set forth in the licensing provisions of Chapter 92 in Title 48 of the Louisiana Administrative Code. Implementation of this proposed rule is not anticipated to result in costs to providers of ROW services or small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the requirements for employees of beneficiaries in the self-direction service option align with the licensing provisions for providers of personal care services.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#024

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office





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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:I.3509 – Managed Care for Physical and Behavioral Health – 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 Managed Care for Physical and Behavioral Health – Reimbursement Methodology, LAC 50:I.3509.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1317). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Irma Gauthier, [Irma.Gauthier2@la.gov](mailto:Irma.Gauthier2@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Kolynda Parker, Medicaid Deputy Director, LDH  
Brandon Bueche, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

#### Managed Care for Physical and Behavioral Health Reimbursement Methodology (LAC 50:I.3509)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.3509 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 a Notice of Intent which proposed to amend the provisions governing managed care for physical and behavioral health to ensure the *Louisiana Administrative Code* accurately reflects the current reimbursement methodology for federally qualified health centers (FQHCs) and rural health clinics (RHCs) (*Louisiana Register*, Volume 49, Number 1). As a result of comments received, the department determined it was necessary to abandon the Notice of Intent published in the January 20, 2023 edition of the *Louisiana Register*.

The department now proposes to promulgate a revised Notice of Intent to amend the provisions governing managed care for physical and behavioral health in order to further clarify the reimbursement methodology currently in use for FQHCs and RHCs.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

##### Part I. Administration

##### Subpart 3. Managed Care for Physical and Behavioral Health

##### Chapter 35. Managed Care Organization Participation Criteria

##### §3509. Reimbursement Methodology

###### A. - K.1....

###### L. Network Provider Reimbursement

###### 1. - 2.a....

3. The MCO shall pay federally qualified health centers (FQHCs) and rural health clinics (RHCs) at least the amount LDH would pay for such services through fee-for-service or defined by the prospective payment system (PPS) rate or the alternative payment methodology rate in effect on the date of service for each encounter.

###### M. - N.2.a....

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1587 (June 2011), amended LR 39:92 (January 2013), LR 41:937 (May 2015), LR 41:2367 (November 2015), LR 42:755 (May 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1771 (December 2019), 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 or 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, 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.

#### **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 August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on

August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Managed Care for Physical and Behavioral Health—Reimbursement Methodology**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing managed care for physical and behavioral health in order to ensure that the administrative rule reflects the current reimbursement methodology for federally qualified health centers (FQHCs) and rural health clinics (RHCs). This rule clarifies that FQHCs and RHCs are reimbursed by the Medicaid managed care organizations at least the amount the department would pay for services through fee-for-service, or according to the prospective payment system rate or the alternative payment methodology rate in effect on the date of service for each encounter. It is anticipated that implementation of this proposed rule not result in costs to providers and will have no impact on small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the provisions governing reimbursement to FQHCs and RHCs are clearly promulgated in the Louisiana Administrative Code.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#025

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:III.2308 – Medicaid Eligibility Former – Foster Care Children Group

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Medicaid Eligibility Former – Foster Care Children Group, LAC 50:III.2308.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1319). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Christopher Chase, [Christopher.Chase@la.gov](mailto:Christopher.Chase@la.gov), and Marsha Baudoin, [Marsha.Baudoin@la.gov](mailto:Marsha.Baudoin@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Charlene Julien, Medicaid Deputy Director, LDH  
Rhett Decoteau, Medicaid Section Chief, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

#### Medicaid Eligibility Former Foster Care Children Group (LAC 50:III.2308)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:III.2308 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 Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) eliminates the requirement that an individual not be eligible for Medicaid coverage in another mandatory group in order to be eligible for the former foster care children group. The SUPPORT Act also requires Medicaid coverage for individuals who aged out of foster care in another state, as long as they otherwise meet the eligibility requirements for the former foster care children group. In compliance with the requirements of the SUPPORT Act, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing Medicaid eligibility for former foster care children who turned 18 on or after January 1, 2023, in order to remove the requirement that the individuals not be eligible under another mandatory group and to extend coverage to those who aged out of foster care in another state, as long as they otherwise meet the eligibility requirements for the former foster care children group.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part III. Eligibility

#### Subpart 3. Eligibility Groups and Factors

#### Chapter 23. Eligibility Groups and Medicaid Programs

#### §2308. Former Foster Care Children Group

A. Pursuant to the Patient Protection and Affordable Care Act of 2010 (collectively referred to as the Affordable Care Act), the Department of Health implemented a Medicaid eligibility group, effective December 31, 2013, to provide health care coverage to youth who are transitioning out of foster care to self-sufficiency upon reaching age 18 or at a higher age selected by the department. This eligibility group is called former foster care children group.

#### B. Eligibility Requirements

1. For youth who turned age 18 prior to January 1, 2023, the youth must meet all of the following requirements to receive Medicaid health care coverage under this eligibility group:

- a. be from age 18 to 26 years old;
- b. is not eligible or enrolled in another mandatory eligibility group described in sections 1902(a)(10)(A)(i)(I)-(VII) of the Social Security Act;
- c. was in foster care under Louisiana's custody and receiving Medicaid upon turning age 18 or upon aging out of foster care at a higher age elected by the state in its title IV-E plan (up to age 21); and

d. resides in Louisiana.

2. For youth who turned age 18 on or after January 1, 2023, the youth must meet all of the following requirements to receive Medicaid health care coverage under this eligibility group:

- a. be from age 18 to 26 years old;
- b. is not enrolled in another mandatory eligibility group described in sections 1902(a)(10)(A)(i)(I)-(VII) of the Social Security Act;
- c. was in foster care under the responsibility of any state and receiving Medicaid upon turning age 18 or such higher age (up to 21) as the state has elected in its title IV-E plan; and
- d. resides in Louisiana.

3. Repealed.

C. - D.1. ...

E. Eligibility for the program will continue until the youth reaches age 26 unless the youth:

1. ...
  2. requests closure of the case; or
  3. dies.
4. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:2260 (November 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1389 (July 2017), 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 or 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 may have a positive impact on small businesses by providing Medicaid reimbursement for individuals that were not previously covered.

#### 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 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, but may enhance the provider's ability to provide the same level of service as described in HCR 170 since it provides Medicaid reimbursement for individuals that were not previously covered.

#### **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 August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Former Foster Care Children Group**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$2,090 for FY 23-24, \$2,183 for FY 24-25, and \$2,431 for FY 25-26. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that this proposed rule will increase federal revenue collections by approximately \$5,188 for FY 23-24, \$4,762 for FY 24-25, and \$5,147 for FY 24-25. It is anticipated that \$324 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing Medicaid eligibility for former foster care children who turned 18 on or after January 1, 2023, in order to remove the requirement that they not be eligible under another mandatory group and to extend coverage in the Former Foster Care Children Group to those individuals who aged out of foster care in another state, as long as they otherwise meet the eligibility requirements for the group. The proposed rule complies with Section 1002(a) of the "Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act" (the "SUPPORT Act"). Providers and small

businesses will benefit from implementation of this proposed rule as it is anticipated to increase Medicaid payments for services provided to certain former foster care children by approximately \$6,630 for FY 23-24, \$6,945 for FY 24-25, and \$7,578 for FY 25-26, since these individuals were not previously eligible for coverage.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#026

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**John Bel Edwards**  
GOVERNOR



**Stephen R. Russo**  
SECRETARY

# State of Louisiana

Louisiana Department of Health  
Office of the Secretary  
September 8, 2023

**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  
Secretary

DocuSigned by:  
*Pam Diez*  
EF88C3715EFC415...

**Re:** Second Report LAC 48:I.Chapter 77– Nurse Staffing Agencies – Licensing Standards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Nurse Staffing Agencies – Licensing Standards, LAC 48:I.Chapter 77.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1320). Written comments were received, however, the proposed rule revisions were not revised per the comments. There was no request for a public hearing 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 is provided for in R.S. 49:966B-C.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Cynthia York, at [Cynthia.York@la.gov](mailto:Cynthia.York@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Tasheka Dukes, RN, HSS Assistant Secretary, LDH  
Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

Nurse Staffing Agencies  
Licensing Standards  
(LAC 48:I.Chapter 77)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 48:I.Chapter 77 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.

Act 577 of the 2022 Regular Session of the Louisiana Legislature directed the Department of Health to establish licensing standards for nurse staffing agencies. In compliance with Act 577, the Department of Health, Bureau of Health Services Financing proposes to adopt provisions governing the licensing of nurse staffing agencies.

#### **Title 48**

#### **PUBLIC HEALTH—GENERAL**

##### **Part I. General Administration**

##### **Subpart 3. Licensing and Certification**

##### **Chapter 77. Nursing Staffing Agencies Licensing Standards**

##### **Subchapter A. General Provisions**

##### **§7701. Introduction**

A. No nurse staffing agency (NSA) shall be required to obtain a license in accordance with these rules until the initial Rules, regulations, and licensing standards are promulgated by the department in accordance with the Administrative Procedure Act.

B. Any person, partnership, corporation, unincorporated association, or other legal entity operating an agency that meets the definition of an NSA shall submit an initial licensing application and fee to the department within 90 days of the promulgation of the initial rules, regulations, and licensing standards.

1. If the person, partnership, corporation, unincorporated association, or other legal entity is not licensed within 180 days after submission of its initial licensing application and fee, the person, partnership, corporation, unincorporated association, or other legal entity shall cease operations until such time as the person, partnership, corporation, unincorporated association, or other legal entity is licensed as an NSA by the department.

C. No person, partnership, corporation, unincorporated association, or other legal entity may establish, operate,



maintain, or advertise as an NSA in Louisiana unless the person, partnership, corporation, unincorporated association, or other legal entity is licensed by the department.

D. Nurse staffing agencies are prohibited from requiring, as a condition of employment, assignment, or referral, that their employees or contracted staff recruit new employees for the NSA from among the permanent employees of the healthcare facility to which the NSA employees or contracted staff have been assigned or referred.

E. The healthcare facility that employs or contracts staff from the NSA is prohibited from requiring, as a condition of employment, its employees to recruit NSA employees or contracted staff to become permanent employees at the healthcare facility.

F. Nurse staffing agencies are prohibited from offering or providing financial incentives to their employees, or contracted staff, for the purpose of inducing permanent employees of healthcare facilities to which they are assigned to become employed or enter into a contract with the NSA.

G. Except as provided in Paragraphs 1 and 2 of this Subsection, an NSA shall not require, in any contract with an NSA employee or contracted staff, or a healthcare facility to which the employee or contracted staff is assigned, the payment of a fee if the employee or contracted staff is hired as a permanent employee of the healthcare facility.

1. An NSA may require the payment of a fee if the fee is payable solely by the healthcare facility and the contract with the healthcare facility specifies that the amount will be reduced pro-rata based on the length of time the NSA employee or contracted staff performs services for the healthcare facility while in the employment of the NSA. The fee shall be reduced to zero over a period of time not to exceed 18 weeks from the date of the NSA's initial assignment of the employee or contracted staff to the healthcare facility.

2. The NSA shall not charge a fee if an NSA employee or contracted staff was employed by a healthcare facility as a permanent employee less than 30 days immediately preceding the agency's initial assignment of the employee or contracted staff to the healthcare facility.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

### **§7703. Definitions**

**Administrator or Director**—the person who is in charge of the daily operations of the NSA.

**Authorized Agency**—a private entity authorized by the Office of State Police to conduct the criminal history checks provided for in these regulations. Nothing herein shall be construed as expanding the access to confidential law enforcement records of the state of Louisiana or its political subdivisions or authorizing access by said agency to the computerized records of law enforcement agencies.

**Certified Nurse Aide (CNA)**—an individual who has completed a Nurse Aide Training and Competency Evaluation Program approved by the state as meeting the requirements of 42 CFR 483.151 and 483.154, or has been determined competent as provided in 42 CFR 483.150(a) and (b) and is listed as certified and in good standing on the state's certified nurse aide registry.

**Cessation of Business**—provider is non-operational and/or has stopped offering or providing services in the state.

**Change of Ownership (CHOW)**—the addition, substitution, or removal, whether by sale, transfer, lease, gift, or otherwise, of a licensed NSA subject to this rule by a person, corporation, or other entity which results in a change of controlling interest of assets or other equity interests of the licensed entity may constitute a CHOW of the licensed entity.

**Client**—the licensed healthcare facility or agency to which the registered nurse, licensed practical nurse, or certified nursing assistant is assigned on a temporary basis.

**DAL**—Division of Administrative Law, or its successor.

**Department**—the Louisiana Department of Health (LDH) or any office or agency thereof designated by the secretary of the department.

**Employee or Contracted Staff**—person employed by the nurse staffing agency or contracted by the nurse staffing agency to perform healthcare services in a healthcare facility for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is hired for a staff position. This definition does not include a person employed or contracted to provide solely consulting services.

**Geographic Location**—primary business location that the nurse staffing agency operates from, as indicated on the NSA license.

**Healthcare Facility**—any person, partnership, corporation, unincorporated association, or other legal entity licensed pursuant to R.S. 40:2006 (A)(2), or current law, and operating or planning to operate within the state.

**HSS**—the LDH, Office of the Secretary, Health Standards Section.

**Licensee**—any nurse staffing agency properly licensed in accordance with this Rule.

**Licensed Practical Nurse (LPN)**—a person who practices practical nursing and who is licensed to practice practical nursing in accordance with R.S. 38:961, or current law.

**Line of Credit**—a credit arrangement with a federally insured, licensed lending institution that is established to ensure that the NSA has available funds as needed to continue the operations of the agency. The line of credit shall be issued to the licensed entity. For purposes of NSA licensure, the line of credit shall not be a loan, credit card, or a bank balance.

**Non-Operational**—the NSA location is not open for business operation on designated days and hours as stated on the licensing application.

**Nurse**—a registered nurse as defined in R.S. 37:913, or current law, or a licensed practical nurse as defined in R.S. 37:961, or current law.

**Nurse Staffing Agency (NSA)**—any person, partnership, corporation, unincorporated association, or other legal entity, including a digital website/platform, that employs, assigns, or refers nurses or certified nurse aides to render healthcare services in a healthcare facility for a fee. For purposes of these regulations, NSA does not include the following:

1. An NSA that solely provides services in Louisiana under a contract or other agreement with the state of Louisiana, or any executive branch department or agency thereof, as a result of a declared disaster, emergency, or public health emergency.

2. The federal or state government department or agency that provides nursing staff or certified nurse aides to

any healthcare provider setting, evacuation site, or shelter location as a result of a declared disaster, emergency, or public health emergency.

3. An entity that solely provides administrative or consulting services.

**Registered Agent**—the individual designated by the NSA as agent for service of process, notice, or demand required or permitted by Louisiana law to be served on the NSA business entity, and has a physical address in the state of Louisiana. If the registered agent is a corporation or other eligible business entity, service of process may be made on an individual, who is 18 years of age or older, and identified as authorized to receive service for the registered agent in a statement on file with the Louisiana Secretary of State.

**Registered Nurse (RN)**—any individual licensed in accordance with R.S. 37:911 et seq., or current law, to engage in the practice of nursing as defined in R.S. 37:913, or current law.

**Secretary**—the secretary of the Louisiana Department of Health, or his/her designee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7705. Licensure Requirements**

A. All NSA providers shall be licensed by the LDH. It shall be unlawful to operate as an NSA without possessing a current, valid license issued by the department. The LDH is the only licensing authority for NSAs in Louisiana.

B. An NSA license shall:

1. be issued only to the entity, person, or persons named in the license application;
2. be obtained for each location from which an NSA is operated unless the NSA is owned and managed by the same entity, person, or persons;
3. be valid for two years from the date of issuance, unless revoked prior to that date, or unless a provisional license is issued;
4. expire on the last day of the twenty-fourth month after the date of issuance, unless timely renewed by the NSA;
5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

C. In order for the NSA to be considered operational and retain licensed status, the NSA shall be open for business operations on designated days and hours as stated on the licensing application.

1. The business location shall not be located in an occupied personal residence.

2. The business location shall have at least one employee or contracted staff, on duty at the business location or available by telecommunication during the days and hours of operation as stated on the licensing application.

3. The NSA shall have at least one published business telephone number.

D. The licensed NSA shall abide by and adhere to any federal or state law, Rule, policy, procedure, manual, or memorandum pertaining to NSAs.

E. A separately licensed NSA shall not use a name which is substantially the same as the name of another NSA licensed by the department. A NSA provider shall not use a

name which is likely to mislead an individual or individuals receiving services into believing it is owned, endorsed, or operated by the state.

F. The NSA shall maintain general and professional liability insurance, and worker's compensation insurance in effect at the time of initial license application and license renewal, and maintained and in effect throughout the term of the license.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7707. Initial Licensure Application Process**

A. An initial application for licensing as an NSA shall be made to the department on forms provided by the department. A completed initial license application packet for NSAs shall be submitted to and approved by the department prior to an applicant providing NSA services.

B. The initial licensing application packet shall include:

1. a completed NSA licensure application and the appropriate non-refundable licensing fee as established by statute. The license application shall contain the name and address of the person, partnership, corporation, unincorporated association, or other legal entity that is the applicant, and the name and address of the registered agent;
2. if applicable, a copy of the NSA's articles of incorporation or organization, a copy of its current bylaws, and the names and addresses of its officers, administrator/director, and shareholders owning more than 5 percent of the corporation's stock;
3. a copy of verification of current active business with the Secretary of State, or equivalent state business registry, which references the current registered agent;
4. a copy of the organizational chart of the NSA, including the names and addresses of the person or persons under whose management or supervision the NSA will be operated;
5. a statement detailing the experience and qualifications of the applicant to operate an NSA;
6. a statement of financial solvency, comprised of the following:
  - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$25,000 that is:
    - i. current and in effect at the time of submission of the application for licensure; and
    - ii. issued to and in the name of the applicant shown on the application for licensure;
  - b. general and professional liability insurance in an amount sufficient to provide coverage in accordance with the total amount recoverable for all malpractice claims as indicated in R.S. 40:1231.2, or current law; and
  - c. worker's compensation insurance that is in compliance with the Louisiana Workers' Compensation Law, R.S. 23:1020.1 et seq., or current law, with a minimum coverage in the amount of \$1,000,000 that is current and in effect at the time of submission of the license application;
7. proof that the LDH, HSS is specifically identified as the certificate holder on any policies and any certificates of insurance issued as proof of insurance by the insurer or producer (agent);
8. a copy of a statewide criminal background check including sex offender registry status, on all applicant(s),

owner(s) with 5 percent or more ownership interest, and administrator/director, for any state lived in within the last five years;

9. a completed disclosure of ownership and control information form;

10. a statement of the days and hours of operation; and

11. any other relevant documentation or information required by the department for licensure.

C. A person convicted of one or more of the following felonies is prohibited from being the owner(s), or the administrator/director of an NSA. For purposes of these provisions, the licensing application shall be rejected by the department for any felony conviction relating to:

1. the violence, abuse, or negligence of a person;

2. the misappropriation of property belonging to another person;

3. cruelty, exploitation, or the sexual battery of the infirmed;

4. a drug offense;

5. crimes of a sexual nature;

6. a firearm or deadly weapon;

7. Medicare or Medicaid fraud; or

8. fraud or misappropriation of federal or state funds.

D. If the initial licensing packet is incomplete, the applicant shall be notified of the missing information and shall have 90 days from receipt of the notification to submit the additional requested information.

1. If the additional requested information is not submitted to the department within 90 days, the application shall be closed.

2. If an initial licensing application is closed, an applicant who is still interested in becoming an NSA shall submit a new initial licensing packet with a new initial non-refundable licensing fee to start the initial licensing process.

E. Once the initial licensing application packet has been approved by the department, the NSA applicant shall notify the department of readiness for an initial licensing survey within 90 days.

1. If an applicant fails to notify the department of readiness for an initial licensing survey within 90 days of approval, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a NSA must submit a new initial licensing packet with a new initial non-refundable licensing fee to start the initial licensing process.

F. Applicant shall be in compliance with all federal, state, departmental, or local statutes, laws, ordinances, rules, and regulations, and all non-refundable fees shall be paid before the NSA provider will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7709. Initial Licensing Surveys**

A. Prior to the initial license being issued to the NSA, an initial licensing survey shall be conducted to ensure compliance with the NSA licensing laws and standards. Except for existing NSAs who timely apply for a license under §7701 of this Chapter, no NSA services shall be provided by the NSA until the initial licensing survey has

been performed, the NSA has been found in compliance, and the initial license has been issued to the NSA by the department. An existing NSA that timely applies for a license must receive a license within 180 days in order to continue to provide services.

B. In the event that the initial licensing survey finds that the NSA is compliant with all licensing laws, regulations, and any other required statutes, laws, ordinances, rules, regulations, and non-refundable fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is revoked.

C. In the event that the initial licensing survey finds that the NSA is noncompliant with any licensing laws, regulations, or any other required statutes, laws, ordinances, rules or regulations that present a potential threat to the health, safety, or welfare of an individual or individuals receiving services, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the NSA is deficient or noncompliant with any licensing laws, regulations, or any other required statutes, laws, ordinances, rules or regulations, but the department in its sole discretion determines that the deficiency or noncompliance does not present a threat to the health, safety, or welfare of an individual or individuals receiving services, the department may issue a provisional initial license for a period not to exceed six months.

1. The provider shall submit an acceptable plan of correction to the department for approval, and the NSA shall be required to correct all such deficiencies or noncompliance(s) prior to the expiration of the provisional license.

a. If all such deficiencies or noncompliance(s) are corrected on the follow-up survey, a full license will be issued.

b. If all such deficiencies or noncompliance(s) are not corrected on the follow-up survey, or new deficiencies or noncompliance(s) affecting the health, safety, or welfare of an individual or individuals receiving services is cited, the provisional license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate non-refundable licensing fee.

E. The initial licensing survey of a NSA shall be an announced survey. Follow-up surveys to the initial licensing surveys shall be unannounced surveys.

F. Once a NSA has been issued an initial license, the department shall conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations, and fees.

1. A plan of correction may be required from an NSA for any survey where deficiencies or noncompliance(s) have been cited. Such plan of correction shall be approved by the department.

2. A follow-up survey may be conducted for any survey where deficiencies or noncompliance(s) have been cited to ensure correction of the noncompliant or deficient practice(s).

G. The department's surveyors and staff shall be given access to all areas of the NSA and all relevant files during any licensing or other survey or complaint investigation, and shall be allowed to interview any NSA staff as necessary to conduct the complaint investigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

**§7711. Types of Licenses and Expiration Dates**

A. The department shall have the authority to issue the following types of licenses:

1. Full Initial License. The department shall issue a full license to the NSA when the initial licensing survey finds that the NSA is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and all non-refundable fees have been paid. The license shall be valid until the expiration date shown on the license, unless the license is revoked.

2. Provisional Initial License. The department may issue a provisional initial license to the NSA when the initial licensing survey finds that the NSA is deficient or noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or non-refundable fees, but the department determines that the deficiencies or noncompliance(s) do not present a threat to the health, safety, or welfare of an individual or individuals receiving services.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed NSA who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations, and non-refundable fees. The license shall be valid until the expiration date shown on the license, unless the license is revoked.

4. Provisional Renewal License. The department, in its sole discretion, may issue a provisional license to an existing licensed NSA for a period not to exceed six months.

a. The department will consider the following circumstances in making a determination to issue a provisional license:

i. compliance history of the NSA to include areas of deficiencies or noncompliance(s) cited;

ii. the nature and severity of any substantiated complaints;

iii. the existing NSA has more than six validated complaints in one biennial licensed period;

iv. the existing NSA has been issued a deficiency or noncompliance that involved placing an individual or individuals receiving services at risk for serious harm or death;

v. the existing NSA has failed to correct deficiencies or noncompliant practice(s) within 60 days of being cited for such deficiencies or noncompliant practice(s) or at the time of a follow-up survey; or

vi. the existing NSA is not in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules, regulations, and non-refundable fees at the time of renewal of the license.

b. When the department issues a provisional license to an existing licensed NSA, the NSA shall submit a plan of correction to LDH for approval, and the NSA shall be

required to correct all such deficiencies or noncompliant practice(s) prior to the expiration of the provisional license. The department shall conduct a follow-up survey of the NSA prior to the expiration of the provisional license.

i. If the follow-up survey determines that the NSA has corrected the deficiencies or noncompliant practice(s) and has maintained compliance during the period of the provisional license, the department may issue a full license until the anniversary date of the NSA license.

ii. If the follow-up survey determines that all deficiencies or noncompliance(s) have not been corrected, or if new deficiencies or noncompliance(s) that are a threat to the health, safety, or welfare of an individual or individuals receiving services are cited on the follow-up survey, the provisional license shall expire. The NSA shall be required to begin the initial licensing process again by submitting a new initial license application packet and appropriate non-refundable fee.

iii. The department shall issue written notice to the NSA of the results of the follow-up survey.

B. If an existing licensed NSA has been issued a notice of license revocation and the NSA's license is due for biennial renewal, the department shall deny the license renewal application and shall not issue a renewal license.

1. If a timely administrative appeal has been filed by the NSA regarding the license revocation, suspension, or termination, the administrative appeal shall be suspensive, and the NSA shall be allowed to continue to operate and provide services until such time as the DAL or department issues a decision on the license revocation, suspension, or termination.

2. If the secretary of the department determines that the violations of the NSA pose an imminent or immediate threat to the health, welfare, or safety of an individual or individuals receiving services, the imposition of such action may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the NSA will be notified in writing.

3. The denial of the license renewal application does not affect, in any manner, the license revocation, suspension, or termination.

C. The renewal of a license does not affect, in any manner, any sanction, civil fine, or other action imposed by the department against the NSA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

**§7713. Changes in Licensee Information, Location, or Key Personnel**

A. Any change regarding the NSA's entity name, doing business as name, geographic address, mailing address, telephone number, or any combination thereof, shall be reported in writing to the HSS within five working days of the change.

B. Any change regarding the NSA's key administrative personnel or registered agent shall be reported in writing to the HSS within 10 working days subsequent to the change.

1. The NSA's notice to the department shall include the individual's:

- a. name;
- b. address;

- c. telephone number;
- d. facsimile (fax) number, if applicable;
- e. electronic mail address;
- f. hire date; and
- g. qualifications, if applicable.

C. If the NSA changes its name without a change in ownership, the NSA shall report such change to the department in writing five days prior to the change.

1. The change in the NSA name requires a change in the NSA license.

2. Payment of the applicable non-refundable fee is required to re-issue the license.

D. If the NSA changes the physical address of its geographic location without a change in ownership, the NSA shall report such change to LDH in writing at least five days prior to the change. Because the license of a NSA is valid only for the geographic location of that NSA, and is not transferrable or assignable, the NSA shall submit a new licensing application.

1. A survey may be required prior to the issuance of the new license.

2. The change in the NSA's physical address results in a new license renewal anniversary date, and an additional full licensing non-refundable fee shall be paid.

E. Any request for a duplicate license shall be accompanied by the applicable non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7715. Change of Ownership of a Nurse Staffing Agency Provider**

A. The license of an NSA is not transferable or assignable and cannot be sold. When an NSA is sold or ownership is transferred, the transferee shall notify the department and apply for a new license within 45 days prior to the transfer.

B. Before a license can be issued to the new owner, the new owner shall meet all licensing application requirements. The new owner shall submit to the department for approval, a change of ownership (CHOW) application packet that includes:

1. a completed CHOW application and the appropriate non-refundable licensing fee as established by statute. The CHOW application shall contain the name and address of the person, partnership, corporation, unincorporated association, or other legal entity that is the applicant, and the name and address of the registered agent;
2. if applicable, a copy of the NSA's articles of incorporation or organization, a copy of its current bylaws, and the names and addresses of its officers, administrator/director, and shareholders owning more than 5 percent of the corporation's stock;
3. the legal CHOW document;
4. a copy of the organizational chart of the NSA, including the names and addresses of the person or persons under whose management or supervision the NSA will be operated;
5. a statement detailing the experience and qualifications of the applicant to operate an NSA;
6. a statement of financial solvency, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$25,000 that is:

- i. current and in effect at the time of submission of the application for licensure; and
- ii. issued to and in the name of the applicant shown on the application for licensure;

b. general and professional liability insurance in an amount sufficient to provide coverage in accordance with the total amount recoverable for all malpractice claims as indicated in R.S. 40:1231.2, or current law; and

c. worker's compensation insurance that is in compliance with the Louisiana Workers' Compensation Law, R.S. 23:1020.1 et seq., or current law, with a minimum coverage in the amount of \$1,000,000 that is current and in effect at the time of submission of the license application;

7. proof that the LDH, HSS is specifically identified as the certificate holder on any policies and any certificates of insurance issued as proof of insurance by the insurer or producer (agent);

8. a copy of a statewide criminal background check, including sex offender registry status, on all applicant(s), owner(s) with 5 percent or more ownership interest, and administrator/director, and for any state lived in within the last five years;

9. a completed disclosure of ownership and control information form; and

10. any other relevant documentation or information required by the department for licensure.

C. If the CHOW results in a change of geographic address, a survey may be required prior to issuance of the new license.

D. A CHOW of the NSA shall not be submitted at time of the biennial renewal of the NSA's license.

E. An NSA may not undergo a CHOW if any of the following conditions exist. The NSA:

1. licensure is provisional, under revocation or denial of renewal;
2. is in a settlement agreement with the department; or
3. has ceased to operate and does not meet operational requirements to hold a license as defined by §7739 and in accordance with §7723 of this Chapter.

F. The department may deny approval of the CHOW for any of the reasons a license may be revoked or denied renewal pursuant to these licensing provisions.

G. Once all application requirements have been completed and approved by the department, a new license shall be issued to the new owner. The transferor shall remain responsible for the operation of the agency until such time as a license is issued to the transferee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7717. Renewal of License**

A. The NSA shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The completed license renewal application packet shall include:

1. a completed NSA license renewal application and the appropriate non-refundable license renewal/delinquent fee as established by statute. The license application shall

contain the name and address of the person, partnership, corporation, unincorporated association, or other legal entity that is the applicant(s), and the name and address of the registered agent;

2. a statement of financial solvency, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$25,000 that is:

i. current and in effect at the time of submission of the application for licensure; and

ii. issued to and in the name of the applicant shown on the application for licensure;

b. general and professional liability insurance in an amount sufficient to provide coverage in accordance with the total amount recoverable for all malpractice claims as indicated in R.S. 40:1231.2, or current law; and

c. worker's compensation insurance that is in compliance with the Louisiana Workers' Compensation Law, R.S. 23:1020.1 et seq., or current law, with a minimum coverage in the amount of \$1,000,000 that is current and in effect at the time of submission of the license application;

3. proof that the LDH, HSS is specifically identified as the certificate holder on any policies and any certificates of insurance issued as proof of insurance by the insurer or producer (agent); and

4. any other relevant documentation or information required by the department for licensure.

B. The department may perform a survey and/or complaint investigation upon biennial renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the NSA license.

1. Upon expiration of the current license, the NSA provider shall cease providing services in accordance with this rule, or current law, and shall meet the requirements of §7725 of this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

**§7719. Denial of Initial Licensure, Revocation of License, Denial of License Renewal, Operation without License and Penalty**

**A. Denial of an Initial License**

1. The department may, after appropriate notice and hearing, deny issuance of an NSA license if the licensee or applicant fails to comply with any licensing laws or regulations, or any other required statutes or regulations that present a potential threat to the health, safety, or welfare of an individual or individuals receiving services.

2. The department may deny an initial license for any of the reasons stated in Subsection C of this Section for which a license may be revoked or a license renewal denied.

B. **Voluntary Non-Renewal of a License.** If an NSA fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the NSA.

C. **Revocation of License or Denial of License Renewal.** A NSA license may be revoked or denied renewal for any of the reasons the following:

1. failure to comply with the statutory requirements and minimum standards set forth by regulations as promulgated by the department;

2. insufficient financial or other resources to operate the NSA in accordance with the requirements of these regulations and the minimum standards, rules, and regulations promulgated herein;

3. failure to establish appropriate personnel policies and procedures for selecting nurses and certified nurse aides for employment, assignment, or referral;

4. failure to perform criminal history checks as required by R.S. 40:1203.1 et seq., or current law;

5. failure to report hours worked by certified nurse aides to the certified nurse aide registry;

6. failure to comply with the terms and provisions of a settlement agreement with LDH or education letter;

7. knowingly making a false statement in any of the following areas, including but not limited to:

a. application for initial license or renewal of license;

b. data forms;

c. employee records;

d. matters under investigation by the department or the Office of the Attorney General, or any law enforcement agency;

8. knowingly making a false statement or providing false, forged, or altered information or documentation to LDH employees or to law enforcement agencies;

9. the use of false, fraudulent, or misleading advertising;

10. fraudulent operation of an NSA by the owner(s), officer(s), director(s), officer(s), board member(s), administrator/director, or other key personnel as defined by §7713 of this Chapter;

11. the applicant(s), owner(s), officer(s), member(s), administrator/director, or person(s) has been convicted of, or has entered a plea of guilty or nolo contendere (no contest) to or has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court;

a. For purposes of these provisions, conviction of a felony involves any felony conviction relating to:

i. the violence, abuse, or negligence of a person;

ii. the misappropriation of property belonging to another person;

iii. cruelty, exploitation, or the sexual battery of the infirmed;

iv. a drug offense;

v. crimes of a sexual nature;

vi. a firearm or deadly weapon;

vii. Medicare or Medicaid fraud; or

viii. fraud or misappropriation of federal or state funds;

12. failure to comply with all reporting requirements in a timely manner, as required by the department;

13. failure to allow, or refusal to allow, the department to conduct a survey or complaint investigation or to

interview NSA staff or other individuals as necessary or required to conduct the survey or complaint investigation;

14. interference with the survey or complaint investigation process, including but not limited to, harassment, intimidation, or threats against the survey staff;

15. failure to allow or refusal to allow access to the NSA facility employee or contract staff's records by authorized department personnel;

16. failure to timely pay outstanding fees, fines, sanctions, or other debts owed to the department; or

17. failure to maintain current, and in effect, required insurance.

D. When a licensed NSA receives a notice of license revocation, the NSA shall notify in writing within 24 hours, all agencies or healthcare facilities for which the NSA provides employees or contracted staff, of the license revocation or suspension action. The notice shall:

1. include the following:

- a. the action taken by the department; and
- b. whether the NSA is appealing the action; and

2. be posted in a conspicuous place inside the licensed premises where an individual or individuals can access the notice.

E. In the event an NSA's license is revoked, renewal is denied, or the license is surrendered in lieu of an adverse action, any owner(s), board member(s), administrator/director, and any other person named on the license application of such NSA is prohibited from owning, managing, supervising, directing, or operating another NSA agency for a period of two years from the date of the final disposition of the revocation, denial action, or surrender.

F. Operation without License and Penalty

1. An NSA shall not operate without a license issued by the department.

a. Any such person, partnership, corporation, unincorporated associations, or other legal entity operating such an agency without a license shall be guilty of a misdemeanor and upon conviction shall be fined no less than \$250 for each day of operation without a license, up to a maximum of \$1,000. Each day of violation shall constitute a separate offense.

b. It shall be the responsibility of the department to inform the appropriate district attorney of the alleged violation to ensure enforcement.

2. If a person, partnership, corporation, unincorporated associations, or other legal entity is operating a NSA without a license issued by the department, the department shall have the authority to issue an immediate cease and desist order to that person, partnership, corporation, unincorporated associations, or other legal entity.

a. Any such NSA receiving such a cease and desist order from the department shall immediately cease operations until such time as that NSA is issued a license by the department.

3. The department shall seek an injunction in the Nineteenth Judicial District Court against any person, partnership, corporation, unincorporated associations, or other legal entity operating an agency that receives a cease and desist order from the department and who does not cease operations immediately.

a. Any such person, partnership, corporation, unincorporated association, or other legal entity operating an agency against whom an injunction is granted shall be liable to the department for attorney fees, costs, and damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7721. Notice and Appeal of Initial License Denial, License Revocation and Denial of License Renewal**

A. Notice of an initial license denial, license revocation, or denial of license renewal shall be given to the provider in writing.

B. The NSA has a right to an administrative reconsideration of the initial license denial, license revocation, or denial of license renewal. There is no right to an administrative reconsideration of a voluntary non-renewal or surrender of a license by the NSA.

1. The NSA shall request the administrative reconsideration within 15 calendar days of the receipt of the notice of the initial license denial, license revocation, or denial of license renewal. The request for administrative reconsideration shall be in writing and received by the department within 15 days from the NSA's receipt of the notice letter from the department.

2. The request for administrative reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an administrative reconsideration is received by HSS, an administrative reconsideration shall be scheduled and the NSA will receive written notification of the date of the administrative reconsideration.

4. The NSA shall have the right to appear in person at the administrative reconsideration and may be represented by counsel.

5. Correction of a deficiency or noncompliance which is the basis for the initial license denial, revocation or denial of license renewal shall not be a basis for administrative reconsideration.

6. The administrative reconsideration process is not in lieu of the administrative appeals process.

7. The NSA will be notified in writing of the results of the administrative reconsideration.

C. The NSA has a right to an administrative appeal of the initial license denial, license revocation, or denial of license renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the NSA.

1. The NSA shall request the administrative appeal within 30 days of the receipt of the results of the administrative reconsideration.

a. The NSA may forego its rights to an administrative reconsideration, and if so, shall request the administrative appeal within 30 calendar days of the receipt of the written notice of the initial license denial, revocation, or denial of license renewal.

2. The request for administrative appeal shall be in writing and shall be submitted to the DAL, or its successor. The request shall include any documentation that

demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the DAL, or its successor, the administrative appeal of the license revocation or denial of license renewal shall be suspensive, and the NSA shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department determines that the violations of the NSA pose an imminent or immediate threat to the health, welfare, or safety of an individual or individuals receiving services, the imposition of the license revocation or denial of license renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the provider will be notified in writing.

4. Correction of a violation or a deficiency or noncompliance which is the basis for the initial license denial, license revocation or denial of license renewal shall not be a basis for an administrative appeal.

D. If an existing licensed NSA has been issued a notice of license revocation, and the NSA's license is due for biennial renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

E. If a timely administrative appeal has been filed by the NSA on an initial license denial, denial of license renewal or license revocation, the DAL, or its successor, shall conduct the hearing in accordance with the Administrative Procedure Act.

1. If the final agency decision is to reverse the initial license denial, denial of license renewal or license revocation, the NSA's license will be re-instated or granted upon the payment of any non-refundable licensing fees, outstanding sanctions, or other fees due to the department.

2. If the final agency decision is to affirm the denial of license renewal or license revocation, the NSA shall give written notice to all licensed healthcare facilities for which the NSA is providing staff.

a. Within 10 calendar days of the final agency decision, the NSA shall notify HSS, in writing, of the secure and confidential location where the employee or contracted staff's records will be stored and the name and contact information of the person(s) responsible for the employee or contracted staff's records.

F. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new NSA, or the issuance of a provisional license to an existing NSA. A NSA who has been issued a provisional license is licensed and operational for the term of the provisional license. The issuance of a provisional license is not considered to be a denial of initial licensure, denial of license renewal, or license revocation.

1. A follow-up survey may be conducted prior to the expiration of a provisional initial license issued to a new NSA or the expiration of a provisional license issued to an existing NSA.

2. A new NSA that is issued a provisional initial license or an existing NSA that is issued a provisional license shall be required to correct all deficiencies or

noncompliance(s) at the time the follow-up survey is conducted.

3. If all deficiencies or noncompliance(s) have not been corrected at the time of the follow-up survey, or if new deficiencies or noncompliance(s) that are a threat to the health, safety, or welfare of an individual or individuals receiving services are cited on the follow-up survey, the provisional initial license or provisional license shall expire on its face and the NSA shall be required to begin the initial licensing process again by submitting a new initial license application packet and non-refundable fee.

4. The department shall issue written notice to the NSA of the results of the follow-up survey.

G. A NSA with a provisional initial license or an existing NSA with a provisional license that expires due to deficiencies or noncompliance(s) cited at the follow-up survey, shall have the right to an administrative reconsideration and the right to an administrative appeal, solely as to the validity of the deficiencies or noncompliance(s).

1. The correction of a deficiency or noncompliance after the follow-up survey shall not be the basis for the administrative reconsideration or for the administrative appeal.

2. The administrative reconsideration and the administrative appeal are limited to whether the deficiencies or noncompliance(s) were properly cited at the follow-up survey.

3. The NSA shall request the administrative reconsideration in writing, which shall be received by the HSS within five calendar days of receipt of the written notice of the results of the follow-up survey from the department. The request for an administrative reconsideration must identify each disputed deficiencies or noncompliance(s) and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

4. The NSA shall request the administrative appeal within 15 calendar days of receipt of the written notice of the results of the follow-up survey from the department. The request for administrative appeal shall be in writing and shall be submitted to the DAL, or its successor. The request for an administrative appeal must identify each disputed deficiencies or noncompliance(s) and the reason for the dispute and include any documentation that demonstrates that the determination was made in error.

5. A NSA with a provisional initial license or an existing NSA with a provisional license that expires under the provisions of this Chapter shall cease providing services and provide written notice to all licensed healthcare facilities for which the NSA is providing staff unless the DAL, or its successor, issues a stay of the expiration.

a. The stay may be granted by the DAL, or its successor, upon application by the NSA at the time the administrative appeal is filed and only after a contradictory hearing and only upon a showing that there is no potential harm to an individual or individuals receiving services being served by the healthcare provider.

6. If a timely administrative appeal has been filed by a NSA with a provisional initial license that has expired, or by an existing NSA whose provisional license has expired under the provisions of this Chapter, the Division of



Administrative Law, or its successor, shall conduct the hearing in accordance with the Administrative Procedure Act.

a. If the final agency decision is to remove all deficiencies or noncompliance(s), the NSA's license will be re-instated upon the payment of any outstanding sanctions and licensing or other fees due to the department.

b. If the final agency decision is to uphold the deficiencies or noncompliance(s) thereby affirming the expiration of the provisional license, the NSA shall give written notice to all licensed healthcare facilities for which the NSA is providing staff.

i. Within 10 calendar days of the final agency decision, the provider shall notify HSS in writing of the secure and confidential location where the employee or contracted staff records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

### **§7723. Cessation of Business**

A. A license shall be immediately null and void if a NSA becomes non-operational.

B. A cessation of business is deemed to be effective the date on which the NSA ceased offering or providing NSA services and/or is considered non-operational in accordance with §7705.C.2.

C. Upon the cessation of business, the NSA shall immediately return the original license to the department, and shall meet the requirements of §7753.C.

D. Cessation of business is deemed to be a voluntary action on the part of the NSA. The NSA does not have a right to appeal a cessation of business.

E. If a NSA fails to follow these procedures, the owner(s), administrator/director, and officer(s) may be prohibited from opening, managing, directing, operating, or owning a NSA for a period of two years.

F. Once any NSA has ceased doing business, the NSA shall not provide services until the NSA has obtained a new initial NSA license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

### **§7725. Survey Activities**

A. The department, or its designee, may conduct periodic licensing surveys, complaint surveys, and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing NSA and to ensure the health, safety and welfare of an individual or individuals receiving services from employees or contracted staff of the NSA. These surveys shall be unannounced.

1. The department, or its designee, upon receiving a complaint from any interested person regarding allegations that a NSA is operating without a valid license issued by the department, may investigate any entity, person or persons.

B. Complaint investigations shall be conducted in accordance with R.S. 40:2009.13 et seq., or current law.

C. The department shall require an acceptable plan of correction from a NSA for any survey or complaint investigation where deficiencies or noncompliance(s) have been cited, regardless of whether the department takes other action against the healthcare facility for the deficiencies or

noncompliance(s) cited in the survey or complaint investigation. The acceptable plan of correction shall be submitted within the prescribed timeframe to the department for approval.

D. A follow-up survey may be conducted for any survey or complaint investigation where deficiencies or noncompliance(s) have been cited to ensure correction of the deficient or noncompliant practice(s).

E. The department may issue sanctions, allowed under current state law or regulation, for deficiencies or noncompliance(s) and violations of law, rules, and regulations. Sanctions include, but are not limited to:

1. civil fines;
2. directed plans of correction;
3. license revocation; and/or
4. denial of license renewal.

F. LDH surveyors and staff shall be:

1. given access to all areas of the NSA agency, to all relevant administrative files during any survey as necessary or required to conduct the survey and/or complaint investigation, and all files relevant to monitor the usage of the NSA services to determine their impact. If the department conducts a survey as an administrative survey, the NSA shall provide all requested documentation and records to the department in electronic format by the end of the next business day from the request; and

2. allowed to interview any NSA employees or contracted staff or other persons as necessary or required to conduct the survey.

G. The NSA shall cooperate in any survey or complaint investigation conducted by the department. Failure to cooperate or timely produce any documentation for inspection or survey may result in action up to and including license revocation.

H. The department shall assess the NSA a survey or complaint investigation fee, not to exceed \$1,000 for any complaint survey or complaint investigation conducted by the department at which deficiencies are substantiated.

1. This survey or complaint investigation fee shall be imposed by the department only after the NSA has completed the administrative process which has upheld the deficiencies or noncompliance or the time for filing any administrative appeal has expired.

2. The survey or complaint investigation fee shall not exceed the cost of performing the survey.

3. This fee shall be in addition to any other sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

### **§7727. Statement of Deficiencies/Noncompliance(s)**

A. The following statements of deficiencies or noncompliance(s) issued by the department to the NSA shall be posted in a conspicuous place on the licensed premises:

1. the most recent biennial survey statement of deficiencies or noncompliance(s); and
2. any complaint survey statement of deficiencies or noncompliance(s).

B. Any statement of deficiencies or noncompliance(s) issued by the department to a NSA shall be available for disclosure to the public 30 days after the NSA submits an acceptable plan of correction to the deficiencies or noncompliance or 90 days after the statement of deficiencies

or noncompliance is issued to the NSA, whichever occurs first.

C. Unless otherwise provided in statute or in these licensing provisions, a NSA shall have the right to an administrative reconsideration of any deficiencies or noncompliance(s) cited as a result of a survey or complaint investigation.

1. Correction of the deficiencies or noncompliance(s) shall not be the basis for the reconsideration.

2. The administrative reconsideration of the deficiencies or noncompliance(s) shall be requested in writing within 10 calendar days of receipt of the statement of deficiencies or noncompliance(s), unless otherwise provided in these standards.

3. The request for administrative reconsideration of the deficiencies or noncompliance(s) shall be made to the department's HSS and will be considered timely if received by HSS within 10 calendar days of the NSA's receipt of the statement of deficiencies or noncompliance(s).

4. If a timely request for an administrative reconsideration is received, the department shall schedule and conduct the administrative reconsideration.

5. The NSA shall be notified in writing of the results of the administrative reconsideration.

6. Except as provided for complaint surveys pursuant to R.S. 40:2009.13 et seq., or current law, and as provided in these licensing provisions for initial license denials, revocations and denial of license renewals, the decision of the administrative reconsideration team shall be the final administrative decision regarding the deficiencies.

7. The request for an administrative reconsideration of any deficiencies or noncompliance(s) cited as a result of a survey or complaint investigation does not delay submission of the required plan of correction within the prescribed timeframe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **Subchapter B. Administration and Organization**

##### **§7735. Governing Body**

A. An NSA shall have an identifiable governing body with responsibility for and authority over the policies and activities of the agency.

1. An NSA shall have documents identifying all members and officers of the governing body, their addresses, and their terms of membership.

2. The governing body shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of an NSA shall:

1. ensure the NSA's continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;

2. ensure that the NSA is adequately funded and fiscally sound;

3. review and approve the NSA's annual budget;

4. designate a person to act as administrator/director and delegate sufficient authority to this person to manage the NSA agency;

5. formulate and annually review, in consultation with the administrator/director, written policies concerning the NSA's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;

6. annually evaluate the administrator/director's performance;

7. have the authority to dismiss the administrator/director;

8. meet with designated representatives of the department whenever required to do so;

9. ensure federal and statewide criminal background checks on all unlicensed persons providing direct care and services to clients in accordance with R.S. 40:1203.1 et seq., or other applicable current state law upon hire;

10. ensure that the NSA does not hire unlicensed persons who have a conviction that bars employment in accordance with R.S. 40:1203.3 or other applicable current state law;

a. the NSA shall have documentation on the final disposition of all charges that bars employment pursuant to applicable state law; and

11. ensure that certified nurse aides (CNAs) comply with R.S. 40:1203.2 or other applicable current state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

##### **§7737. Policy and Procedures**

A. The NSA shall develop, implement, and comply with NSA-specific written policies and procedures, approved by the owner(s) or governing body, related to compliance with this Chapter, including but not limited to the following policies and procedures:

1. confidentiality and security of files;

2. publicity and marketing;

3. prohibition of illegal or coercive inducement, solicitation and/or kickbacks;

4. personnel policies;

5. employee or contracted staff grievance policy;

6. incidents and accidents, including medical emergencies;

7. records maintenance and retention;

8. compliance with memoranda issued by the department and applicable to NSAs;

9. a plan for recruitment, screening, personal interview, reference check, orientation, ongoing training, development, supervision, and at least annual performance evaluation of staff members;

10. written job descriptions for each employee or contracted staff position;

11. abuse reporting procedures that require all employees or contracted staff, to report any and all incidents of abuse or mistreatment of an individual or individuals receiving services from employees or contracted staff referred to a licensed healthcare facility by the NSA, whether that abuse or mistreatment or is done by another staff member, a family member, patient(s), client(s), or other

person(s) when the staff person witnesses or becomes aware of such incident. Abuse reporting procedures shall be in accordance with R.S. 40:2199.11 et seq., or current applicable law;

12. a written policy to prevent discrimination in accordance with R.S. 40:2199.11 et seq., or current law;

13. a written policy to ensure that there is a final disposition of all charges that appear on the employee or contracted staff person's criminal background check, including the sex offender registry in accordance current law; and

14. a written policy to address prohibited use of social media. The policy shall ensure that all employees or contracted staff, receive training relative to the restricted use of social media and include, at a minimum ensuring preservation of dignity, respect, and confidentiality of an individual or individuals' receipt of healthcare services, and protection of an individual or individuals receiving healthcare services' privacy and personal and property rights.

B. An NSA shall comply with all federal, state, and local laws, rules, and regulations in the development and implementation of its policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7739. Business Location**

A. The NSA shall operate independently from any other business or entity, and shall not operate office space with any other business or entity.

B. The business location shall:

1. have a telephone number which is available and accessible 24 hours a day, 7 days a week, including holidays;

2. report to the HSS within five business days, any planned deviation of the NSA's days and hours of operation;

3. report to the HSS within two business days, any unplanned deviation of NSA's days and hours of operation;

4. have internet access and a working electronic mail address;

a. the electronic mail address shall be provided to the department as well as any changes to the electronic mail address within five working days to ensure that the department has current contact information; and

b. the electronic mail address shall be monitored by the NSA on an ongoing basis to receive communication from the department; and

5. have space for storage of personnel records either electronically or in paper form or both in an area that is secure, safe from hazards, and does not breach confidentiality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **§7741. Branch Offices and Satellites of Nurse Staffing Agency Providers**

A. Nurse staffing agency providers with branch offices or satellite locations shall meet the following:

1. No branch office or satellite location may be opened without prior written approval from HSS. In order for a branch office or satellite location to be approved, the

parent agency shall have maintained a full licensure for the previous 12-month period.

2. The department may consider the following in making a determination whether to approve a branch office or a satellite location:

a. compliance history of the NSA to include the areas of deficiencies or noncompliance(s) cited within the last 12 months;

b. the nature and severity of any substantiated complaints within the last 12 months;

c. if the existing NSA has more than six validated complaints in one biennial licensed period;

d. if the parent agency currently has a provisional license;

e. if the parent agency currently is in a settlement agreement with the department;

f. if the parent agency is currently under license revocation or denial of license renewal;

g. if the parent agency is currently undergoing a change of ownership; and

h. if any adverse action has been taken against the license of other agencies operated by the owner of the parent agency within the previous two-year period.

3. The branch office or satellite location shall be held out to the public as a branch office or satellite of the parent agency so that the public will be aware of the identity of the agency operating the branch office or satellite.

a. Reference to the name of the parent agency shall be contained in any written documents, signs, or other promotional materials relating to the branch office or satellite.

4. Personnel files shall be readily accessible at the branch office or satellite location.

5. A branch office or a satellite location is subject to survey, including complaint surveys, by the department at any time to determine compliance with minimum licensing standards.

6. A branch office or a satellite location shall:

a. post and maintain regular office hours in accordance with §7739.B; and

b. staff the branch office or satellite location with at least one employee or contracted staff, on duty at the business location or available by telecommunication during the days and hours of operation as stated on the licensing application.

7. Each branch office or satellite location shall:

a. fall under the license of the parent agency; and

b. be assessed the required fee, assessed at the time the license application is made and once every two years thereafter for renewal of the branch office or satellite license. This fee is non-refundable and is in addition to any other fees that may be assessed in accordance with applicable laws, rules, regulations and standards.

8. Existing branch office or satellite location approvals will be renewed at the time of the parent agency's license renewal, if the parent agency meets the requirements for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

## **Subchapter C. Provider Responsibilities**

### **§7751. Core Staffing Requirements**

A. Each NSA shall ensure that its employees or contracted staff meet the minimum licensing, training, and orientation standards for which those employees or contracted staff are licensed or certified.

B. Each NSA shall have a nurse serving as a manager or supervisor of all nurses and certified nurse aides.

C. The NSA shall not employ, assign, or refer for use in a healthcare facility in Louisiana, a nurse or CNA unless the nurse or CNA is certified or licensed in accordance with the applicable provision of state and federal laws or regulations, and meets the minimum mandatory qualifications and requirements for CNAs. Each nurse and CNA shall comply with all pertinent regulations of the department relating to the health and other qualifications of employees or contracted staff employed in healthcare facilities.

D. Administrator/Director Responsibilities. The administrator/director shall:

1. be a full time employee of the NSA provider and shall not be a contract employee;
2. be available in person or by telecommunication at all times for all aspects of agency operation or designate in writing an individual to assume the authority and control of the agency if the administrator/director is temporarily unavailable;
3. be responsible for the day-to-day management and supervision of the operations of the agency;
4. be responsible for compliance with all regulations, laws, policies, and procedures applicable to NSAs;
5. employ qualified employees or contracted staff and ensure adequate staff education;
6. ensure the accuracy of public information and materials;
7. act as liaison between employees or contracted staff, and the governing body;
8. implement an ongoing, accurate, and effective budgeting and accounting system;
9. ensure that all employees or contracted staff receive proper orientation and training on policies and procedures, as required by law or as necessary to fulfill each employee or contracted staff person's responsibilities; and
10. not serve as administrator for more than one licensed NSA.

#### **E. Professional Staff**

1. Professional staff employed or contracted by the NSA shall hold a current, valid professional license issued by the appropriate licensing board.

2. The NSA shall maintain proof of annual verification of current, valid professional licensure of all licensed professional staff.

3. All professional services furnished or provided shall be furnished or provided in accordance with professional standards of practice, according to the scope of practice requirements for each licensed discipline.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49;

### **§7753. Record Keeping**

A. Administrative Records. The NSA shall have an administrative record that includes:

1. a list of members and officers of the governing body, along with their addresses and terms of membership;
2. a copy of its articles of incorporation or organization, by-laws, and operating agreements, or partnership documents, if applicable;
3. a copy of the current NSA license issued by HSS;
4. the written policies and procedures approved annually by the owner/governing body that address the requirements listed in Subchapter B of this Chapter;
5. the minutes of formal governing body meetings;
6. the organizational chart of the NSA;
7. all leases, contracts, and purchase of service agreements to which the NSA is a party, which includes all appropriate credentials;
8. insurance policies;
9. annual budgets and audit reports; and
10. copies of incident/accident reports.

B. Personnel Records. An NSA shall maintain a personnel record for each employee or contracted staff. At a minimum, this file shall contain the following:

1. the application for employment, including the resume of education, training, and experience, if applicable;
2. a criminal history check, prior to an offer of direct or contract staff employment or contract, in accordance with federal and state law;
3. evidence of current applicable professional or paraprofessional credentials/certifications/licensure according to state law, rule, or regulation;
4. evidence of review of adverse action reports on the Louisiana certified nurse aide registry, upon hire and annually thereafter;
5. documentation including, but not limited to, any healthcare screening or immunizations that are required by the state, federally, or the client;
6. documentation of employees or contracted staff's hire and termination dates, and the number of hours worked per month;
7. documentation of orientation and annual training of staff, as required by the written contract between the NSA and the healthcare facility;
8. documentation of an employee or contracted staff person's name and state issued identification;
9. documentation of reference checks; and
10. annual performance evaluations.

#### **C. Maintenance and Storage of Records**

1. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws. An NSA shall have sufficient space, facilities, and supplies for providing effective storage of records.

2. An NSA which is closing shall submit to the department for approval, 30 days prior to closure, a written plan for the disposition of employee or contracted staff records. The plan shall include:

- a. the effective date of the closure;

b. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed NSA's employees or contracted staff's related records;

c. the name and contact information for the appointed custodian(s) who shall provide the following:

i. access to records and copies of personnel records, upon presentation of proper authorization(s); and

ii. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss, and destruction; and

d. to whom records may be released. Release shall be made in accordance with any and all federal and state laws.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **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 may have an indeterminable impact on small businesses, since there is no way to determine how many NSAs will be required to pay nonrefundable application fees, how many licensed NSAs may be required to pay other fees, or how many may be assessed penalties for operation without a license.

#### **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 increase direct or indirect cost to the provider to provide the same level of service, and may have an adverse impact on the provider's ability to provide the same level of service as described in HCR 170, since NSAs will be required to pay nonrefundable application, may have to pay other fees, and may be assessed penalties for operation without a license. The proposed Rule may also impact opportunities for recruitment of nurses and/or certified nurse aides.

#### **Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for

responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Nurse Staffing Agencies Licensing Standards**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$7,560 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have an indeterminable impact on revenue collections in FY 23-24, FY 24-25, and FY 25-26, since there is no way to determine how many providers will be required to pay nonrefundable application fees, how many licensed providers may be required to pay other fees, or how many providers may be assessed penalties for operation without a license.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule adopts provisions governing the licensing of nurse staffing agencies (NSAs), in compliance with Act 577 of the 2022 Regular Session of the Louisiana Legislature. Implementation of this proposed rule is anticipated to result in an indeterminable impact on NSA providers in FY 23-24, FY 24-25, and FY 25-26, since there is no way to determine how many will be required to pay nonrefundable application fees, how many licensed NSAs may be required to pay other fees, or how many NSAs may be assessed penalties for operation without a license.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule may impact opportunities for recruitment of nurses and/or certified nurse aides.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2307#027

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

## SUMMARY OF WRITTEN COMMENTS

**Proposed Rule:** Nursing Staffing Agencies – Licensing Standards  
**Public Hearing Date:** N/A  
**Docket No. :** N/A  
**Conducted By:** N/A

Written Comments Received From	Mode of Receipt	Summary of Comments
C. Matthew Harrell Phelps and Dunbar LLP	Via US Mail	<ul style="list-style-type: none"> <li>Requests that the department clarify and expound on the provisions of §7751.B which parrots the language in R.S. 40:2120.20(B) as adopted by the Legislature.</li> <li>Requests that the department clarify the specific obligations of the nurse manager or supervisor and explicitly permit nurse staffing agencies to contract or employ a nurse manager or supervisor on part-time or contract basis.</li> <li>States that the regulation should at least specify: (1) the duties and responsibilities of the nurse supervisor or manager; (2) whether the nurse supervisor or manger must be employed; and (3) whether the nurse supervisor or manager must be available on a full-time basis.</li> </ul>
Claudia Joly, MPA,BSW, CHC Director, Compliance & Regulatory Services AMN Healthcare	Via Email and U.S. Mail	<p>Provides the following feedback on the proposed Rule:</p> <ol style="list-style-type: none"> <li>Long-Term Contracts and Conversion Fee Prohibition:               <ul style="list-style-type: none"> <li>Restriction may hinder the ability of staffing agencies to support LA healthcare facilities with much-needed international healthcare staff.</li> <li>Recommends the rule define long-term and regular contracts. Long-term contracts being 24 months or longer. Exclude long term contracts from the conversion and liquidation fee prohibition.</li> <li>Recommends the rule provide an exception or exclusion for international nurse staffing agencies.</li> </ul> </li> <li>Digital Website/Platforms:               <ul style="list-style-type: none"> <li>Current definition includes “digital website/platform, that employs, assigns, or refers.”</li> <li>Not all web-based platforms have full credentialing services requested by the client.</li> <li>Would be challenging to enforce credentialing items if the client is purchasing and requesting a platform with no credentialing requirement</li> <li>Recommends agency standards be adjusted to reflect the uniqueness of web based platforms and/or create a separate type of license or registration or a separate set of credentialing standards.</li> </ul> </li> <li>Primary Source Verification:               <ul style="list-style-type: none"> <li>Online primary verification systems allow for increased compliance visibility.</li> <li>A primary source guards against potential licensure fraud.</li> <li>Recommends the department develop and implement an online state license/registration verification website that would allow any user to look-up a Nurse Staffing Agency and obtain current status of Nurse Staffing Agency registration with the State.</li> </ul> </li> </ol>

		<p>4. Nurse Staffing Agency Definition Clarification – Temporary Versus Permanent:</p> <ul style="list-style-type: none"> <li>• Current definition does not specify if the rules apply to temporary or permanent hired “nurses or certified nurse aides to render healthcare services in a healthcare facility for a fee”.</li> <li>• Lack of direct hire exclusion may unintentionally include direct hire recruitment agencies in the purview of the regulation.</li> <li>• Recommends including “temporary” to clarify that the regulations apply to temporary hires/placements, not permanent hires/placements.</li> </ul> <p>5. Administrator Clarifications:</p> <ul style="list-style-type: none"> <li>• Administrator currently required to be different for every Nurse Staffing Agency and a full-time employee of the Nurse Staffing Agency.</li> <li>• AMN has a parent company with various entities underneath that corporate umbrella. The various entities would be licensed separately. Administrators, at times, are employed by the parent company and not the licensed entities themselves.</li> <li>• Recommends that the draft rule be updated to allow for an Administrator to be employed by the parent Company of the licensed entity, and that the requirement that the Administrator be different for each license to include the same Administrator if employed by a parent Company of the licensed entity.</li> </ul>
Rebecca D. Bonivet, Esq Corporate Counsel and Director of Compliance MedPro Healthcare Staffing	Via Email and U.S. Mail	Suggests defining “Temporary Basis,” which is included in the definition of “Client” to resolve unintended consequences of Act 577 relative to foreign-educated healthcare professionals that commit to working 24 months at a facility and are encouraged to become permanent staff at the facility. The Act eliminates the ability for an organization classified as a Nurse Staffing Agency to enter into restrictive covenants (such as a covenant not to compete) with the health care personnel it employs at a healthcare facility and stifles the ability to collect damages.
Toby Malara, Esq Vice President Government Relations American Staffing Associations	Via Email and U.S. Mail	<p>ASA worked closely with the legislature regarding HB 958 and proposes the following changes after reviewing the proposed Rule:</p> <ul style="list-style-type: none"> <li>• §7701.B.1: Requests deletion of the 180-day requirement as submittal of the application within 90 days adequately addresses the staffing agency requirement to submit a complete application.</li> <li>• §7701.C: Suggests revision to language, as drafted, which arguably prohibits a staffing agency from advertising in Louisiana for work in other states where they are approved to conduct business without first obtaining a license in LA.</li> <li>• §7701.G.1: Suggests a minor revise to make clear that the 18-week clock starts when the agency employee begins work at the facility and not on the date that the NSA enters into an agreement to assign the nurse, which can occur weeks or months before the nurse’s actual start date.</li> <li>• §7701G.2: Suggests a minor revise to make clear that the 30-day clock starts on the date nurse begins work at the facility.</li> <li>• §7705.C.2: Suggests language revision to clarify that the reference to “employee or contracted” staff only means internal/corporate employees of an NSA, not contracted staff who perform services at a healthcare facility.</li> </ul>

		<ul style="list-style-type: none"> <li>• §7709: Strongly encourages the Department to strike the obligation to conduct a survey, seemingly onsite at the NSA, as a condition of licensure and consider proof of Joint Commission Certification as an acceptable proof of compliance in lieu of the survey.</li> <li>• §7713.D: Strongly encourages the Department to allow for one application where all physical locations can be referenced and that a change in physical locations does not require notice, let alone an additional physical inspection of a location, particularly if such location is outside the state of Louisiana.</li> <li>• §7715.A: Suggests language revision since <i>"Requiring prior written notice of a transfer of licensure in the event of a sale of the business, particularly in the context of an equity sale, where the license remains held by the same legal entity and same operations and administrative team is not practical because no sale is confirmed to occur until the sale actually closes."</i></li> <li>• §7737.A.14: Suggests language revision since <i>"Requiring specific training related to social media is unnecessary and potentially conflicts with the clients' existing policies and procedures governing social media and conduct. Clinicians placed through NSA are obligated to comply with all client policies and to participate in all client-required training."</i></li> <li>• §7741.A: Suggests a minor change for clarification regarding nurse staffing agency providers with branch offices or satellite location to specify "in Louisiana".</li> <li>• §7751.B: Suggests a minor change to clarify that all employees and contracted staff are under the direct supervision and control of the hospital/facility/client because the NSA is not a health care provider nor are they onsite at the facility and supervision rightfully rests with the hospital/facility/client who oversees the contracted staff on a daily basis and directs their work.</li> <li>• §7751.D: Urges the state to remove the provision that the administrator/director shall not serve as an administrator for more than one licensed NSA.</li> <li>• §7753.B.7, 9, and 10: Urges the state to make the changes to the requirements for documentation of orientation and annual training of staff, documentation of reference checks, and annual performance evaluations.</li> </ul>
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**From:** [Cynthia York](#)  
**To:** [matthew.harrell@phelps.com](mailto:matthew.harrell@phelps.com)  
**Cc:** [Tasheka Dukes](#); [Christina Robertson](#); [Jennifer Haines \(LDH\)](#); [Michael Mire](#); [William Whatley](#); [Alisa Morris](#); [Veronica Dent](#); [Lyrica Johnson](#); [Allen Enger \(LDH\)](#); [Cynthia York](#)  
**Subject:** RE: Comment Letter Re: Chapter 77. Nursing Staffing Agencies Licensing Standards  
**Date:** Friday, September 8, 2023 3:38:38 PM  
**Attachments:** [NSA public comment response letter - 9.8.23 C. Matthew Harrell.pdf](#)

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Mr. Harrell,

Thank you for your email correspondence and letter submitted via regular mail, regarding the Notice of Intent for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

Your comments have been thoroughly reviewed and considered, and I have attached herein a response on behalf of the Louisiana Department of Health, Health Standards Section.

Please let me know if you have any questions.

Best regards,

*Cynthia York*

Cynthia York, DNP, RN, MCPM, FRE  
Health Standards Section, Rulemaking Liaison  
Fellow, NCSBN Institute of Regulatory Excellence  
Louisiana Department of Health  
628 North 4<sup>th</sup> Street  
Baton Rouge, LA 70802  
[Cynthia.york@la.gov](mailto:Cynthia.york@la.gov)  
Phone: (225) 342-9049  
Fax: (225) 342-0157



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**From:** Toby Malara <[tmalara@americanstaffing.net](mailto:tmalara@americanstaffing.net)>  
**Sent:** Monday, August 28, 2023 7:27 AM  
**To:** Tasheka Dukes <[Tasheka.Dukes@LA.GOV](mailto:Tasheka.Dukes@LA.GOV)>; William Whatley <[William.Whatley@LA.GOV](mailto:William.Whatley@LA.GOV)>; Jennifer Haines (LDH) <[Jennifer.Haines@la.gov](mailto:Jennifer.Haines@la.gov)>; Cynthia York <[Cynthia.York@LA.GOV](mailto:Cynthia.York@LA.GOV)>  
**Cc:** Stephen Dwyer <[sdwyer@americanstaffing.net](mailto:sdwyer@americanstaffing.net)>; Ed Lenz <[elenz@americanstaffing.net](mailto:elenz@americanstaffing.net)>; Brittany Sakata <[bsakata@americanstaffing.net](mailto:bsakata@americanstaffing.net)>

**Subject:** Comment Letter Re: Chapter 77. Nursing Staffing Agencies Licensing Standards

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Good morning:

Please find attached to this email a comment letter from the American Staffing Association with regards to Louisiana's proposed rules concerning Chapter 77 Nurse Staffing Agencies Licensing Standards.

As required, we have also submitted a copy of the letter by US Mail to the attention of Ms. Dukes.

We thank you for the opportunity to provide comment and if we can answer any questions or be of any additional assistance, please let me know.

Sincerely  
Toby Malara

Toby Malara, Esq.  
Vice President Government Relations  
**American Staffing Association**  
277 S. Washington St., Suite 200  
Alexandria, VA 22314-3675  
703-253-2020  
703-253-2027 direct  
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[americanstaffing.net](http://americanstaffing.net)

The American Staffing Association is the voice of the U.S. staffing, recruiting, and workforce solutions industry. ASA and its affiliated chapters advance the interests of the industry across all sectors through advocacy, research, education, and the promotion of high standards of legal, ethical, and professional practices. Visit [americanstaffing.net](http://americanstaffing.net).

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John Bel Edwards  
GOVERNOR



Stephen R. Russo, JD  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

VIA U.S. POSTAL SERVICE AND ELECTRONIC SUBMISSION

September 8, 2023

Mr. C. Matthew Harrell  
Phelps Dunbar, LLP  
365 Canal Street, Suite 2000  
New Orleans, Louisiana 70130

[Matthew.harrell@phelps.com](mailto:Matthew.harrell@phelps.com)

**RE: Notice of Intent for Nurse Staffing Agencies (LAC 48:I.Chapter 77)**

Dear Mr. Harrell:

This letter is in response to your correspondence regarding the Notice of Intent (NOI) for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

The NOI proposed to adopt provisions governing the licensing of Nurse Staffing Agencies, in compliance with Act 577 of the 2022 Regular Session of the Louisiana Legislature. After thoroughly reviewing and giving due consideration to your concerns, the decision has been made to continue with the provisions of the July 20, 2023 NOI as published in the *Louisiana Register*. However, please be advised that a new NOI will be forthcoming wherein additional changes to the Nurse Staffing Agencies regulations will be proposed considering the comments received regarding the NOI for Nurse Staffing Agencies published July 20, 2023.

We appreciate your willingness to provide comments regarding the proposed licensing provisions for Nurse Staffing Agencies, and hope that you will continue to work with us as we strive to improve healthcare outcomes for Louisiana citizens.

Mr. C. Matthew Harrell  
Phelps Dunbar, LLP  
September 8, 2023  
Page 2

Should you have any questions or comments regarding Medicaid administrative rulemaking activity or rulemaking activity relative to healthcare licensing standards, you may contact Ms. Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to [Veronica.Dent@la.gov](mailto:Veronica.Dent@la.gov).

Sincerely,



Tasheka Dukes, RN  
Deputy Assistant Secretary  
LDH Health Standards Section

TD/KHB/VYD

cc: Tangela Womack  
Kimberly Humbles

**From:** [Cynthia York](#)  
**To:** [claudia.joly@amnhealthcare.com](mailto:claudia.joly@amnhealthcare.com)  
**Cc:** [Tasheka Dukes](#); [Christina Robertson](#); [Jennifer Haines \(LDH\)](#); [Michael Mire](#); [William Whatley](#); [Alisa Morris](#); [Cynthia York](#); [Veronica Dent](#); [Lyrica Johnson](#); [Allen Enger \(LDH\)](#)  
**Subject:** FW: AMN Healthcare Submission - LA Nursing Staffing Agency Proposed Rules Submission  
**Date:** Friday, September 8, 2023 3:27:56 PM  
**Attachments:** [NSA public comment response letter - 9.8.23 Claudia Joly.pdf](#)

---

Ms. Joly:

Thank you for your email correspondence and letter submitted via regular mail, regarding the Notice of Intent for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

Your comments have been thoroughly reviewed and considered, and I have attached herein a response on behalf of the Louisiana Department of Health, Health Standards Section.

Please let me know if you have any questions.

Best regards,

*Cynthia York*

Cynthia York, DNP, RN, MCPM, FRE  
Health Standards Section, Rulemaking Liaison  
Fellow, NCSBN Institute of Regulatory Excellence  
Louisiana Department of Health  
628 North 4<sup>th</sup> Street  
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---

**From:** Claudia Joly <[Claudia.Joly@amnhealthcare.com](mailto:Claudia.Joly@amnhealthcare.com)>  
**Sent:** Tuesday, August 29, 2023 11:51 AM  
**To:** Tasheka Dukes <[Tasheka.Dukes@LA.GOV](mailto:Tasheka.Dukes@LA.GOV)>  
**Cc:** Steve Wehn <[Steve.Wehn@amnhealthcare.com](mailto:Steve.Wehn@amnhealthcare.com)>; Cicely Miller

<[Cicely.Miller@amnhealthcare.com](mailto:Cicely.Miller@amnhealthcare.com)>

**Subject:** AMN Healthcare Submission - LA Nursing Staffing Agency Proposed Rules Submission

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Dear Ms. Dukes,

Compliance and quality are central to AMN Healthcare's operations. Following the passing of HB 958, AMN Healthcare has made every effort to prepare to be in full compliance with the Louisiana Department of Health Nurse Staffing Agency requirements. Thank you for the opportunity to provide feedback on the proposed rules on behalf of AMN Healthcare and its subsidiaries. Please see the attached letter. If you have any questions or feedback, please feel free to contact me at 303-968-0462 or by email via [claudia.joly@amnhealthcare.com](mailto:claudia.joly@amnhealthcare.com).

Regards,

Claudia Joly, MPA, BSW, CHC  
Director, Compliance & Regulatory Services  
Legal, Risk and Compliance



Mobile: 303-968-0462  
[AMNHealthcare.com](http://AMNHealthcare.com)  
[NYSE:AMN](http://NYSE:AMN)

John Bel Edwards  
GOVERNOR



Stephen R. Russo, JD  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

VIA U.S. POSTAL SERVICE AND ELECTRONIC SUBMISSION

September 8, 2023

Ms. Claudia Joly  
Director, Compliance & Regulatory Services  
AMN Healthcare, Inc.  
2999 Olympus Blvd, Suite 500  
Dallas, Texas 75019

[Claudia.joly@amnhealthcare.com](mailto:Claudia.joly@amnhealthcare.com)

**RE: Notice of Intent for Nurse Staffing Agencies (LAC 48:I.Chapter 77)**

Dear Ms. Joly:

This letter is in response to your correspondence regarding the Notice of Intent (NOI) for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

The NOI proposed to adopt provisions governing the licensing of Nurse Staffing Agencies, in compliance with Act 577 of the 2022 Regular Session of the Louisiana Legislature. After thoroughly reviewing and giving due consideration to your concerns, the decision has been made to continue with the provisions of the July 20, 2023 NOI as published in the *Louisiana Register*. However, please be advised that a new NOI will be forthcoming wherein additional changes to the Nurse Staffing Agencies regulations will be proposed considering the comments received regarding the NOI for Nurse Staffing Agencies published July 20, 2023.

We appreciate your willingness to provide comments regarding the proposed licensing provisions for Nurse Staffing Agencies, and hope that you will continue to work with us as we strive to improve healthcare outcomes for Louisiana citizens.

Ms. Claudia Joly  
Director, Compliance & Regulatory Services  
AMN Healthcare, Inc.  
September 8, 2023  
Page 2

Should you have any questions or comments regarding Medicaid administrative rulemaking activity or rulemaking activity relative to healthcare licensing standards, you may contact Ms. Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to [Veronica.Dent@la.gov](mailto:Veronica.Dent@la.gov).

Sincerely,



Tasheka Dukes, RN  
Deputy Assistant Secretary  
LDH Health Standards Section

TD/KHB/VYD

cc: Tangela Womack  
Kimberly Humbles



**From:** [Cynthia York](#)  
**To:** [rbovinet@medprostaffing.com](mailto:rbovinet@medprostaffing.com)  
**Cc:** [Tasheka Dukes](#); [Christina Robertson](#); [Jennifer Haines \(LDH\)](#); [Michael Mire](#); [William Whatley](#); [Alisa Morris](#); [Veronica Dent](#); [Lyrica Johnson](#); [Allen Enger \(LDH\)](#); [Cynthia York](#)  
**Subject:** RE: Comment Letter Re: Chapter 77. Nursing Staffing Agencies Licensing Standards  
**Date:** Friday, September 8, 2023 3:59:56 PM  
**Attachments:** [NSA public comment response letter - 9.8.23 Rebecca Bovinet.pdf](#)

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Ms. Bovinet,

Thank you for your email correspondence regarding the Notice of Intent for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

Your comments have been thoroughly reviewed and considered, and I have attached herein a response on behalf of the Louisiana Department of Health, Health Standards Section.

Please let me know if you have any questions.

Best regards,

*Cynthia York*

Cynthia York, DNP, RN, MCPM, FRE  
Health Standards Section, Rulemaking Liaison  
Fellow, NCSBN Institute of Regulatory Excellence  
Louisiana Department of Health  
628 North 4<sup>th</sup> Street  
Baton Rouge, LA 70802  
[Cynthia.york@la.gov](mailto:Cynthia.york@la.gov)  
Phone: (225) 342-9049  
Fax: (225) 342-0157



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**From:** Toby Malara <[tmalara@americanstaffing.net](mailto:tmalara@americanstaffing.net)>  
**Sent:** Monday, August 28, 2023 7:27 AM  
**To:** Tasheka Dukes <[Tasheka.Dukes@LA.GOV](mailto:Tasheka.Dukes@LA.GOV)>; William Whatley <[William.Whatley@LA.GOV](mailto:William.Whatley@LA.GOV)>; Jennifer Haines (LDH) <[Jennifer.Haines@la.gov](mailto:Jennifer.Haines@la.gov)>; Cynthia York <[Cynthia.York@LA.GOV](mailto:Cynthia.York@LA.GOV)>  
**Cc:** Stephen Dwyer <[sdwyer@americanstaffing.net](mailto:sdwyer@americanstaffing.net)>; Ed Lenz <[elenz@americanstaffing.net](mailto:elenz@americanstaffing.net)>; Brittany Sakata <[bsakata@americanstaffing.net](mailto:bsakata@americanstaffing.net)>  
**Subject:** Comment Letter Re: Chapter 77. Nursing Staffing Agencies Licensing Standards

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

Good morning:

Please find attached to this email a comment letter from the American Staffing Association with regards to Louisiana's proposed rules concerning Chapter 77 Nurse Staffing Agencies Licensing Standards.

As required, we have also submitted a copy of the letter by US Mail to the attention of Ms. Dukes.

We thank you for the opportunity to provide comment and if we can answer any questions or be of any additional assistance, please let me know.

Sincerely  
Toby Malara

Toby Malara, Esq.  
Vice President Government Relations  
**American Staffing Association**  
277 S. Washington St., Suite 200  
Alexandria, VA 22314-3675  
703-253-2020  
703-253-2027 direct  
703-253-2053 fax  
[tmalara@americanstaffing.net](mailto:tmalara@americanstaffing.net)  
[americanstaffing.net](http://americanstaffing.net)

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**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

September 8, 2023

VIA EMAIL ONLY TO: [rbovinet@medprostaffing.com](mailto:rbovinet@medprostaffing.com)

Dear Ms. Bovinet,

**RE: Notice of Intent for Nurse Staffing Agencies (LAC 48:I.Chapter 77)**

This letter is in response to your correspondence regarding the Notice of Intent (NOI) for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

The NOI proposed to adopt provisions governing the licensing of Nurse Staffing Agencies, in compliance with Act 577 of the 2022 Regular Session of the Louisiana Legislature. After thoroughly reviewing and giving due consideration to your concerns, the decision has been made to continue with the provisions of the July 20, 2023 NOI as published in the *Louisiana Register*. However, please be advised that a new NOI will be forthcoming wherein additional changes to the Nurse Staffing Agencies regulations will be proposed considering the comments received regarding the NOI for Nurse Staffing Agencies published July 20, 2023.

We appreciate your willingness to provide comments regarding the proposed licensing provisions for Nurse Staffing Agencies, and hope that you will continue to work with us as we strive to improve healthcare outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity or rulemaking activity relative to healthcare licensing standards, you may contact Ms. Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to [Veronica.Dent@la.gov](mailto:Veronica.Dent@la.gov).

Sincerely,

A handwritten signature in cursive script that reads "Tasheka Dukes".

Tasheka Dukes, RN  
Deputy Assistant Secretary  
LDH Health Standards Section

TD/KHB/VYD

cc: Tangela Womack  
Kimberly Humbles

**From:** [Cynthia York](#)  
**To:** [tmalara@americanstaffing.net](mailto:tmalara@americanstaffing.net)  
**Cc:** [Tasheka Dukes](#); [Christina Robertson](#); [Jennifer Haines \(LDH\)](#); [Michael Mire](#); [William Whatley](#); [Alisa Morris](#); [Veronica Dent](#); [Lyrica Johnson](#); [Allen Enger \(LDH\)](#); [Cynthia York](#)  
**Subject:** FW: Comment Letter Re: Chapter 77. Nursing Staffing Agencies Licensing Standards  
**Date:** Friday, September 8, 2023 3:35:26 PM  
**Attachments:** [NSA public comment response letter - 9.8.23 Toby Malara.pdf](#)

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Mr. Malara:

Thank you for your email correspondence and letter submitted via regular mail, regarding the Notice of Intent for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

Your comments have been thoroughly reviewed and considered, and I have attached herein a response on behalf of the Louisiana Department of Health, Health Standards Section.

Please let me know if you have any questions.

Best regards,

*Cynthia York*

Cynthia York, DNP, RN, MCPM, FRE  
Health Standards Section, Rulemaking Liaison  
Fellow, NCSBN Institute of Regulatory Excellence  
Louisiana Department of Health  
628 North 4<sup>th</sup> Street  
Baton Rouge, LA 70802  
[Cynthia.york@la.gov](mailto:Cynthia.york@la.gov)  
Phone: (225) 342-9049  
Fax: (225) 342-0157



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**To:** Tasheka Dukes <[Tasheka.Dukes@LA.GOV](mailto:Tasheka.Dukes@LA.GOV)>; William Whatley <[William.Whatley@LA.GOV](mailto:William.Whatley@LA.GOV)>; Jennifer Haines (LDH) <[Jennifer.Haines@la.gov](mailto:Jennifer.Haines@la.gov)>; Cynthia York <[Cynthia.York@LA.GOV](mailto:Cynthia.York@LA.GOV)>  
**Cc:** Stephen Dwyer <[sdwyer@americanstaffing.net](mailto:sdwyer@americanstaffing.net)>; Ed Lenz <[elenz@americanstaffing.net](mailto:elenz@americanstaffing.net)>; Brittany Sakata <[bsakata@americanstaffing.net](mailto:bsakata@americanstaffing.net)>

**Subject:** Comment Letter Re: Chapter 77. Nursing Staffing Agencies Licensing Standards

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Good morning:

Please find attached to this email a comment letter from the American Staffing Association with regards to Louisiana's proposed rules concerning Chapter 77 Nurse Staffing Agencies Licensing Standards.

As required, we have also submitted a copy of the letter by US Mail to the attention of Ms. Dukes.

We thank you for the opportunity to provide comment and if we can answer any questions or be of any additional assistance, please let me know.

Sincerely  
Toby Malara

Toby Malara, Esq.  
Vice President Government Relations  
**American Staffing Association**  
277 S. Washington St., Suite 200  
Alexandria, VA 22314-3675  
703-253-2020  
703-253-2027 direct  
703-253-2053 fax  
[tmalara@americanstaffing.net](mailto:tmalara@americanstaffing.net)  
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**John Bel Edwards**  
GOVERNOR



**Stephen R. Russo, JD**  
SECRETARY

**State of Louisiana**  
Louisiana Department of Health  
Bureau of Health Services Financing

VIA U.S. POSTAL SERVICE AND ELECTRONIC SUBMISSION

September 8, 2023

Mr. Toby Malara  
Vice President, Government Relations  
American Staffing Association  
277 South Washington Street, Suite 200  
Alexandria, Virginia 22314-3675

tmalara@americanstaffing.net

**RE: Notice of Intent for Nurse Staffing Agencies (LAC 48:I.Chapter 77)**

Dear Mr. Malara:

This letter is in response to your correspondence regarding the Notice of Intent (NOI) for Nurse Staffing Agencies that was published in the July 20, 2023 edition of the *Louisiana Register*.

The NOI proposed to adopt provisions governing the licensing of Nurse Staffing Agencies, in compliance with Act 577 of the 2022 Regular Session of the Louisiana Legislature. After thoroughly reviewing and giving due consideration to your concerns, the decision has been made to continue with the provisions of the July 20, 2023 NOI as published in the *Louisiana Register*. However, please be advised that a new NOI will be forthcoming wherein additional changes to the Nurse Staffing Agencies regulations will be proposed considering the comments received regarding the NOI for Nurse Staffing Agencies published July 20, 2023.

We appreciate your willingness to provide comments regarding the proposed licensing provisions for Nurse Staffing Agencies, and hope that you will continue to work with us as we strive to improve healthcare outcomes for Louisiana citizens.

Mr. Toby Malara  
Vice President, Government Relations  
American Staffing Association  
September 8, 2023  
Page 2

Should you have any questions or comments regarding Medicaid administrative rulemaking activity or rulemaking activity relative to healthcare licensing standards, you may contact Ms. Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to [Veronica.Dent@la.gov](mailto:Veronica.Dent@la.gov).

Sincerely,



Tasheka Dukes, RN  
Deputy Assistant Secretary  
LDH Health Standards Section

TD/KHB/VYD

cc: Tangela Womack  
Kimberly Humbles



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:V.5311, 5511, 5911, and 6113 – Outpatient Hospital Services – Public Non-State Small Rural Hospitals

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Outpatient Hospital Services – Public Non-State Small Rural Hospitals, LAC 50:V.5311, 5511, 5911, and 6113.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1334). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Tizi Robinson, [Tizi.Robinson@la.gov](mailto:Tizi.Robinson@la.gov), and Debbie Gough, [Debbie.Gough@la.gov](mailto:Debbie.Gough@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Rachel Newman, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register



## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

#### Outpatient Hospital Services Public Non-State Small Rural Hospitals (LAC 50:V.5311, 5511, 5911, and 6113)

The Department of Health, Bureau of Health Services Financing amends LAC 50:V.5311, §5511, §5911 and §6113 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 outpatient hospital services in order to establish quarterly supplemental payments for certain public non-state small rural hospitals located in administrative region 3 that render qualifying services during the quarter (*Louisiana Register*, Volume 49, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2023 Emergency Rule.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 5. Outpatient Hospital Services

#### Chapter 53. Outpatient Surgery

#### Subchapter B. Reimbursement Methodology

#### §5311. Small Rural Hospitals

##### A. - C.2. ...

D. Public Non-State Small Rural Hospitals. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural hospitals for outpatient hospital surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify, as of September 30, 2022, the small hospital must:

- be publicly (non-state) owned and operated;
- be located in Department of Health administrative region 3; and
- provide routine and emergency inpatient and outpatient obstetrical services with separately identified nursery department statistics reported on the cost report.

2. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural public hospitals for outpatient hospital surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

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 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing. LR 38:1251 (May 2012). LR 40:542 (March 2014), amended by the Department of Health, Bureau of Health Services Financing. LR 49:

#### Chapter 55. Clinic Services

#### Subchapter B. Reimbursement Methodology

#### §5511. Small Rural Hospitals

##### A. - C.2. ...

D. Public Non-State Small Rural Hospitals. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural hospitals for outpatient hospital clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify, as of September 30, 2022, the small hospital must:

- be publicly (non-state) owned and operated;
- be located in Department of Health administrative region 3; and
- provide routine and emergency inpatient and outpatient obstetrical services with separately identified nursery department statistics reported on the cost report.

2. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural public hospitals for outpatient hospital clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

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 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing. LR 38:1251 (May 2012), LR 40:542 (March 2014), amended by the Department of Health, Bureau of Health Services Financing. LR 49:

#### Chapter 59. Rehabilitation Services

#### Subchapter B. Reimbursement Methodology

#### §5911. Small Rural Hospitals

##### A. - C.2. ...

D. Public Non-State Small Rural Hospitals. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural hospitals for outpatient hospital rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify, as of September 30, 2022, the small hospital must:

- be publicly (non-state) owned and operated;
- be located in Department of Health administrative region 3; and
- provide routine and emergency inpatient and outpatient obstetrical services with separately identified nursery department statistics reported on the cost report.

2. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural public hospitals for outpatient hospital rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

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 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012), LR 40:543 (March 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

**Chapter 61. Other Outpatient Hospital Services**  
**Subchapter B. Reimbursement Methodology**  
**§6113. Small Rural Hospitals**

A. - C.2. ...

D. Public Non-State Small Rural Hospitals. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural hospitals for outpatient hospital services other than clinical diagnostic laboratory, outpatient surgeries, rehabilitation, and outpatient facility fees clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify, as of September 30, 2022, the small hospital must:

- a. be publicly (non-state) owned and operated;
- b. be located in Department of Health administrative region 3; and
- c. provide routine and emergency inpatient and outpatient obstetrical services with separately identified nursery department statistics reported on the cost report.

2. Effective for dates of service on or after July 1, 2023, quarterly supplemental payments will be issued to qualifying small rural public hospitals for outpatient hospital services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

**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 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012), LR 40:543 (March 2014), amended by the Department of Health, Bureau of Health Services Financing, 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 or 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, 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.

**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 August 29, 2023.

**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 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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Outpatient Hospital Services  
Public Non-State Small Rural Hospitals**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO  
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,080 (\$540 SGF and \$540 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$540 will be collected in FY 23-24 for the

federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2023 Emergency Rule, which amended the provisions governing outpatient hospital services in order to establish quarterly supplemental payments for a public non-state small rural hospital located in administrative region 3 that renders qualifying services during the quarter. The proposed rule ensures that obstetrical services which were discontinued by the non-rural hospital in St. Mary Parish remain locally available to Medicaid beneficiaries by providing additional funding to the public non-state small rural hospital that must absorb the patient volume for these services. It is anticipated that implementation of this proposed rule will result in additional payments to this facility but will have no overall fiscal impact to the Medicaid Program in FY 23-24, FY 24-25, and FY 25-26, as these payments are from the aggregate outpatient upper payment limit cap which is a finite funding source. Funding available for other public non-state hospitals would be offset by these payments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#028

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



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

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:XI.16705 – Rural Health Clinics – 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 Rural Health Clinics – Reimbursement Methodology, LAC 50:XI.16705.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1336). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Tizi Robinson, [Tizi.Robinson@la.gov](mailto:Tizi.Robinson@la.gov), Jackie Cummings, [Jackie.Cummings2@la.gov](mailto:Jackie.Cummings2@la.gov), and Debbie Gough, [Debbie.Gough@la.gov](mailto:Debbie.Gough@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Kolynda Parker, Medicaid Deputy Director, LDH  
Rachel Newman, Medicaid Deputy Director, LDH  
Brandon Bueche, Medicaid Program Manager, LDH  
Irma Gauthier, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XI. Clinic Services**  
**Subpart 15. Rural Health Clinics**  
**Chapter 167. Reimbursement Methodology**  
**§16705. Hospital-Based Rural Health Clinics**

A. - A.2. ...

3. The payment received under this methodology will be compared each year to the BIPA PPS rate to assure the clinic that their payment under this alternative payment methodology (APM) is at least equal to the BIPA PPS rate. If the payment calculation at 110 percent of allowable cost is less than the BIPA PPS payments, the clinic will be paid the difference.

B. Effective for dates of service on or after July 1, 2023, the reimbursement methodology for services rendered by a rural health clinic licensed as part of a small rural hospital and included as a hospital outpatient department on the hospital's fiscal year end cost report prior to July 1, 2023 shall be eligible for the APM at 110 percent of allowable costs as calculated through cost settlement. Reimbursement shall be as follows:

1. The reimbursement methodology will be in accordance with §16705.A.1-3 as indicated above.

2. Future qualifications for the 110 percent alternative payment methodology reimbursement shall be determined on an annual basis for hospital-based rural health clinics enrolling and licensing as hospital outpatient departments during the hospital's fiscal year end cost reporting periods subsequent to June 30, 2023. Payments shall begin effective for dates of service beginning on July 1 after qualification.

3. Hospital-based rural health clinics that terminate their licensing as hospital outpatient departments will no longer be eligible for the alternative payment methodology at 110 percent of allowable costs upon termination.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:957 (May 2009), amended by the Department of Health, Bureau of Health Services Financing, 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 or 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.

**NOTICE OF INTENT**

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

**Rural Health Clinics  
Reimbursement Methodology  
(LAC 50:XI.16705)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XI.16705 as authorized by R.S. 36:254 and 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.

Act 327 of the 2007 Regular Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to reimburse small rural hospital outpatient services at 110 percent of cost. In compliance with the directives of Act 327, the department amended the provisions governing the reimbursement methodology for rural health clinics (RHCs) licensed as part of small rural hospitals and included a July 1, 2007 cutoff date (*Louisiana Register*, Volume 35, Number 5). The department promulgated an Emergency Rule which amended the provisions governing rural health clinics in order to remove the cutoff date to allow existing RHCs licensed as small rural hospital outpatient departments after July 1, 2007 and new RHCs to be reimbursed at 110 percent of cost (*Louisiana Register*, Volume 49, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2023 Emergency Rule.

### **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, no direct and indirect cost to the provider to provide the same level of service, but may enhance the provider's ability to provide the same level of service as described in HCR 170, since this proposed Rule increases payments to rural health clinics for the services they already render.

### **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 August 29, 2023.

### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Rural Health Clinics Reimbursement Methodology**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$4,494,285 for FY 23-24, \$4,701,032 for FY 24-25, and \$4,798,970 for FY 25-26. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that implementation of this proposed rule will increase statutory dedicated revenue collections from the Medical Assistance Trust Fund by approximately \$953,223 for FY 23-24, \$973,115 for FY 24-25, and \$993,389 for FY 25-26. Additionally it is anticipated that federal revenue collections

will increase by \$11,884,367 for FY 23-24, \$12,018,860 for FY 24-25, and \$12,269,253 for FY 25-26. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule continues the provisions of the July 1, 2023 Emergency Rule, which amended the reimbursement methodology for rural health clinics (RHCs) in order to remove a July 1, 2007 cutoff date for RHCs licensed as small rural hospital outpatient departments to be reimbursed at 110 percent of cost to allow existing RHCs licensed after the cutoff date and new RHCs to receive the enhanced reimbursement going forward. This proposed rule also ensures that the provisions of the Louisiana Administrative Code are consistent with the revised statute governing these services. Implementation of this proposed rule is anticipated to increase reimbursements to qualifying RHCs by \$17,331,336 for FY 23-24, \$17,693,007 for FY 24-25, and \$18,061,611 for FY 25-26.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#029

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office



## State of Louisiana

Louisiana Department of Health  
Office of the Secretary

September 8, 2023

**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  
Secretary

**Re:** Second Report to LAC 50:I.8301 – Third Party Liability – Pay and Chase

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Third Party Liability – Pay and Chase, LAC 50:I.8301.

A Notice of Intent on the proposed amendments was published in the July 20, 2023 issue of the *Louisiana Register* (LR 49:1337). No written comments were received and there was no request 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the July 20, 2023, Notice of Intent when it is published as a final rule in the October 20, 2023, issue of the *Louisiana Register*.

Please contact Rebecca Harris, [Rebecca.Harris@la.gov](mailto:Rebecca.Harris@la.gov), and Donna Palermo, [Donna.Palermo2@la.gov](mailto:Donna.Palermo2@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Kimberly Sullivan, Interim Medicaid Director, LDH  
Tangela Womack, Medicaid Deputy Director, LDH  
Mitzi Hochheiser, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

**NOTICE OF INTENT**

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

**Third Party Liability  
Pay and Chase  
(LAC 50:I.8301)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.8301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act (the Act). This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bipartisan Budget Act of 2018 (BBA) amended section 1902(a)(25)(E) of the Act to require states to use standard coordination of benefits cost avoidance when processing claims for prenatal services and implemented a "wait and see" period of 100 days for claims associated with medical support enforcement. In compliance with the BBA, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code*.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part I. Administration**

**Subpart 9. Recovery**

**Chapter 83. Third Party Liability**

**Subchapter A. Claims**

**§8301. Pay and Chase**

**A. ...**

**\* \* \***



B. Medicaid claims for services covered under the State Plan will be cost avoided when there is probable third party liability unless the claim is for one of the following services:

1. primary preventive pediatric care diagnoses are confined to those listed under *Diagnosis Codes Related to Preventive Pediatric Care Services* at [www.lamedicaid.com](http://www.lamedicaid.com);

a. Individuals under age 21 qualify; and

b. Hospitals are not included and must continue to file claims with the health insurance carriers;

2. early and periodic screening, diagnosis and treatment (EPSDT) medical, vision, and hearing services;

3. EPSDT dental services;

4. EPSDT services to children with disabilities (formerly referred to as school-based health services) which result from screening and are rendered by school boards;

5. services which are a result of an EPSDT referral, indicated by entering "Y" in block 24H of the CMS-1500 claim form, sometimes called HCFA-1500, or "I" as a condition code on the UB-92 (form locators 24 through 30); and

6. services for Medicaid eligibles whose health insurance is provided by an absent parent who is under the jurisdiction of the state child support enforcement agency are subject to a "wait and see period" that was effective April 1, 2021.

a. *Wait and See*—payment of a claim only after documentation is attached to a hard copy claim and submitted to the state's fiscal intermediary demonstrating that 100 days have elapsed since the provider billed the responsible third party and remains to be paid.

C. In processing these claims, the Medicaid agency will pay the claim and seek reimbursement from liable third parties, utilizing the claims method of payment called "pay and chase".

**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 Human Resources, Office of Family Security, LR 13:578 (October 1978), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 17:781 (August 1991), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:848 (May 2006), amended by the Department of Health, Bureau of Health Services Financing, 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 or 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, 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.

#### **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 August 29, 2023.

#### **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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Third Party Liability Pay and Chase**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is

anticipated that \$324 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code* (LAC). This proposed rule ensures that the current claims methodology, implemented by Louisiana Medicaid in 2021 in compliance with the Bipartisan Budget Act of 2018, is added to the LAC. Implementation of this proposed rule will not result in costs to providers or small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the administrative rule aligns with federal regulations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2307#030

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office