



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

November 10, 2020

**Via Statutorily Prescribed Email**

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

**From:** Dr. Courtney N. Phillips  
Secretary

A handwritten signature in blue ink, appearing to read "Courtney N. Phillips".

**Re:** Second Report on Proposed Amendments to LAC 50:XXII.Chapters 81-85 – Act 421 Children's Medicaid Option

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Act 421 Children's Medicaid Option rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1291). 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. Attached with this report are copies of the written comments for the record. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

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

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

**Cc:** Susan Meyers, Medicaid Program Manager, LDH  
Jenifer Katzman, Deputy Medicaid Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, 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**

#### **Act 421 Children's Medicaid Option (LAC 50:XXII.Chapters 81-85)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to adopt LAC 50:XXII.Chapters 81-85 in the Medical Assistance Program as authorized by R.S. 36:254, 46:977.21-977.25 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 has expenditure authority under Section 1115 of the Social Security Act to claim the costs of services provided under a risk contract to eligible individuals as medical assistance. Act 421 of the 2019 Regular Session of the Louisiana Legislature directed the department to establish the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) option within the Medical Assistance Program through which children with disabilities can access Medicaid-funded services regardless of their parents' income. In compliance with Act 421, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to adopt provisions to establish the Act

421 Children's Medicaid Option program as a Section 1115 demonstration waiver.

## **TITLE 50**

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

#### **Part XXII. 1115 Demonstration Waivers**

#### **Subpart 9. Act 421 Children's Medicaid Option**

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

##### **§8101. Purpose**

A. The purpose of the Act 421 Children's Medicaid Option (421-CMO) program is to provide Medicaid State Plan services to children with disabilities who meet the eligibility criteria set forth in this Subpart, despite parental or household income that would otherwise exclude them from Medicaid eligibility.

B. The Department of Health (LDH) has expenditure authority under Section 1115 of the Social Security Act (Act) to claim as medical assistance the costs of services provided under a risk contract to eligible individuals. Through this Section 1115 demonstration, the State is allowed to permit Medicaid managed care organizations (MCOs) to provide Medicaid State Plan services to children with disabilities regardless of their parents' and/or household income. LDH shall, subject to the approval of the Centers for Medicare and Medicaid Services (CMS), institute a program to provide health care services via the State's Medicaid program for the population contemplated under Section 134 of the Tax Equity and Fiscal Responsibility

Act of 1982 (P.L. 97-248), subject to additional terms and conditions set forth in this Subpart.

C. 421-CMO enrollees are eligible for all medically necessary Medicaid State Plan services.

D. The number of enrollees in the 421-CMO program is contingent upon the amount appropriated by the Louisiana legislature annually for that purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

**§8103. Effective Date and Administration**

A. Services provided under the 421-CMO program shall begin upon approval of expenditure authority under Section 1115 of the Act by CMS.

B. Upon approval by CMS, enrollment and start of services will commence at the beginning of the first calendar quarter after conclusion of the initial registration period.

C. The 421-CMO program shall be administered as a Section 1115 demonstration waiver under the authority of LDH, in collaboration with the Healthy Louisiana MCOs.

D. The 421-CMO program is a demonstration waiver that will span five years. LDH may request approval for an extension

of this Section 1115 demonstration from CMS prior to the expiration date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8105. Enrollee Qualifications and Admissions Criteria

A. In order to qualify for the 421-CMO program, an individual must meet both programmatic eligibility and clinical eligibility criteria as set forth in this Subpart.

B. Programmatic eligibility. In order to be programmatically eligible for the 421-CMO program, an individual must meet all of the following criteria:

1. Is 18 years of age or younger (under 19 years of age).

2. Is a U.S. Citizen or qualified alien.

3. Is a Louisiana resident.

4. Has or has applied for a Social Security Number.

5. Has countable resources of \$2,000 or less (parental/household resources not considered).

6. Has care needs that can be safely met at home at a lower cost than the cost of services provided in an institutional setting.

7. Maintains pre-existing private health insurance for major medical coverage, either through employer sponsored insurance, the federal marketplace, or other independently purchased commercial health insurance, unless a hardship exception is applied for and granted by LDH.

a. LDH will employ a look-back period of one 180 days to determine pre-existing private health insurance.

b. Lock-out period. If LDH determines that a family or responsible adult has discontinued pre-existing private health insurance, either during the look-back period or at any time during the enrollee's enrollment in the 421-CMO program, LDH will impose a lock-out.

c. During the lock-out period, the enrollee will be unable to receive services, but will retain his or her enrollment in the 421-CMO program.

d. The lock-out period will end when the enrollee demonstrates new or former pre-existing private health insurance has been re-instated.

e. The lock-out period will extend up to 180 days from discontinuation of pre-existing private health insurance or 421-CMO program offer, whichever date is later.

f. At the conclusion of the 180 day lock-out period, if the enrollee has not re-instated the pre-existing private health insurance, the enrollee will be terminated from the 421-CMO program.

g. If terminated, the individual can re-register for the 421-CMO program and be placed on the 421-CMO registry as a new applicant.

h. Hardship Exception. The enrollee can apply for a hardship exception at any time, including during a lock-out period.

i. A hardship exists when:

(a). private health insurance premiums and any additional deductibles and co-payments or out of pocket healthcare costs for the individual obtaining coverage equal or exceed 5% of the household income;

(b). unemployment resulting in loss of employer-sponsored private insurance for the child; or

(c). an exemption period of 90 days for transition to new employment, after which the enrollee must resume private health insurance.

ii. LDH's grant of a hardship exception will end the lock-out period.

8. Is not otherwise eligible for Medicaid or CHIP.

C. Clinical eligibility. In order to be clinically eligible for the 421-CMO program, an individual must meet all of the following criteria:

1. Has a disability, defined as a medically determinable physical or mental impairment (or combination of impairments) that:



a. results in marked and severe functional limitations; and

b. has lasted or is expected to last for at least one year or to result in death.

2. Meets the medical necessity requirement, assessed on an annual basis, for institutional placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID), a nursing facility, or a hospital.

a. An individual meets ICF/IID level of care when he/she:

i. has obtained a statement of approval from the Office for Citizens with Developmental Disabilities, confirming that he has a developmental disability as defined in R.S. 28:451.2; and

ii. meets the requirements for active treatment of a developmental disability under the supervision of a qualified developmental disability professional, as prescribed on Form 90-L.

b. An individual meets nursing facility level of care when he demonstrates the following, assessed in accordance with the Act 421 Children's Medicaid Option Assessment Tool:

i. the need for skilled nursing and/or therapeutic interventions on a regular and sustained basis; and



ii. substantial functional limitations as compared to same age peer group in two of the following areas: learning, communication, self-care, mobility, social competency, money management (for children 18 and older), work, and meal preparation.

c. An individual meets hospital level of care when he demonstrates the following, assessed in accordance with the Act 421 Children's Medicaid Option Assessment Tool:

i. frequent and complex medical care that requires the use of equipment to prevent life-threatening situations, with skilled medical care required multiple times during each 24-hour period;

ii. complex skilled medical interventions that are expected to persist for at least six months; and

iii. overall health condition that is highly unstable and presents constant potential for complications or rapid deterioration, with the result that the child requires continuous assessment by professional nurses, parents, or other properly instructed individuals, in order to detect unstable and life-threatening condition and respond promptly with appropriate care.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8107. Admission Denial or Discharge Criteria

A. Individuals shall be denied admission to or discharged from 421-CMO program if any of the following criteria is met:

1. the individual does not meet the programmatic eligibility requirements for the 421-CMO program;
2. the individual does not meet the clinical eligibility requirements for the 421-CMO program;
3. the individual is incarcerated or placed under the jurisdiction of penal authorities, courts or state juvenile justice authorities;
4. the individual resides in another state or has a change of residence to another state;
5. the individual or responsible adult fails to cooperate in the eligibility determination/re-determination process; or
6. the 421-CMO enrollee is admitted to an ICF/IID, nursing facility, or hospital with the intent to not return to 421-CMO services;
  - a. the enrollee is deemed to intend to return to 421-CMO services when documentation is received from the treating physician that the admission is temporary and shall not exceed ninety (90) days;

b. the enrollee will be discharged from 421-CMO on the ninety-first (91st) day after admission if the enrollee is still in the ICF/IID, nursing facility, or hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

**§8107. Allocation of Act 421 Children's Medicaid Option Opportunities**

A. The Act 421 Children's Medicaid Option request for services registry, hereafter referred to as the 421-CMO registry, shall be used to identify persons who meet ICF/IID, nursing facility, or hospital level of care who are waiting for a 421-CMO program slot. Individuals who are found eligible and who request 421-CMO program services will be added to the 421-CMO registry. Funded 421-CMO program slots will be offered in accordance with this Subpart.

B. Initial Registration

1. There will be an initial registration period lasting one month, during which time registration will occur in two pathways:

a. Online registration forms will be taken from individuals who are not currently on the

intellectual/developmental disabilities (I/DD) request for services registry or otherwise enrolled in Medicaid.

b. Children 18 years of age and under (under 19) who are on the I/DD request for services registry and are not currently enrolled in Medicaid or CHIP will be automatically registered for participation.

i. Individuals receiving automatic placement on the 421-CMO registry will receive a preprinted mailed form explaining the 421-CMO program and that they are automatically registered. The form will provide them with the opportunity to opt out of participation, and if they do not opt out, attest to prioritization needs per the process set forth in this Subpart.

2. LDH will create a numerically ordered 421-CMO registry based on individuals that registered during the initial registration period, placing them in random order.

3. Individuals registered during the initial registration period will receive 421-CMO program offers according to the prioritization process established in this Subpart first. Once priority offers are complete, 421-CMO program offers will then be made in numeric order of the 421-CMO registry.

4. Individuals who do not receive 421-CMO program offers will remain on the 421-CMO registry in the numeric order

assigned, with a protected registry date corresponding to the close of the initial registration period.

C. Ongoing Registration. After the initial registration period and slot allocation, subsequent registrants for the 421-CMO program will be assigned a 421-CMO registry date based on the date on which they register and will receive an offer on a first-come, first-served basis unless otherwise prioritized as provided for in this Subpart. 421-CMO program offers will be made upon availability.

D. Prioritization

1. In order to ensure individuals with the most urgent needs receive services, LDH will prioritize 421-CMO program offers to individuals who meet either of the following criteria:

a. The individual has been institutionalized in an ICF/IID, nursing facility, or hospital for 30 of the preceding 90 days. Institutional days do not have to be consecutive.

b. On three or more separate occasions in the preceding 90 days, the individual has been admitted to an ICF/IID, nursing facility, or hospital and remained institutionalized for at least 24 hours.

2. An individual newly registering for 421-CMO program during ongoing registration may request and, if the individual qualifies, receive prioritization in order to receive

the next available 421-CMO program offer. In addition, at any time an individual currently on the 421-CMO registry may request and, if the individual qualifies, receive prioritization.

3. Prioritization will be considered valid for a period of 180 days from the date that prioritization is approved while waiting for a 421-CMO program offer. At the expiration of the 180 days, if no 421-CMO program offer has been made, the individual loses prioritization but retains his or her original protected registry date for purposes of receiving a 421-CMO program offer.

a. If an individual's priority period has expired with no 421-CMO program offer available during that time period, he or she may request to requalify for prioritization.

i. If the individual qualifies without a break in the two priority periods (they are consecutive), he/she shall retain the original prioritization date.

ii. If the individual qualifies with a break in the priority periods, he/she shall receive a new prioritization date.

b. There is no limit on the number of times an individual may qualify for prioritization prior to receiving a 421-CMO program offer.

c. If more than one individual has received prioritization at one time, the next available 421-CMO program



offer will be made to the individual with the earliest prioritization date.

4. Once enrolled in the 421-CMO program, enrollees will not be required to demonstrate ongoing need for prioritization. Prioritization is only a method of fast-tracking initial entry into the 421-CMO program for families with the highest urgency of need.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

#### **§8109. Eligibility and Enrollment**

A. Upon extension of a 421-CMO program offer to an individual, the individual will need to establish programmatic and clinical eligibility by showing he or she meets all eligibility criteria. When eligibility is determined, the individual will be enrolled in the 421-CMO program and with a health and dental plan of their choice.

#### **B. Louisiana Health Insurance Premium Payment Program (LaHIPP)**

1. Enrollees in the 421-CMO program shall be enrolled in LaHIPP when cost-effective health plans are available through the individual's employer or a responsible

party's employer-based health plan or other health insurance if the individual is enrolled or eligible for such a health plan.

2. All requirements and coverage through the LaHIPP program shall follow the provisions set forth in LAC 50:III.2311 except that 421-CMO program enrollees enrolled in LaHIPP shall receive their Medicaid benefits through managed care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

### Chapter 83. Services

#### §8301. Covered Services

A. The coverage of 421-CMO services under the scope of this demonstration are all services offered under the Louisiana Medicaid State Plan.

B. All 421-CMO services must be medically necessary. The medical necessity for services shall be determined by a licensed professional or physician who is acting within the scope of his/her professional license and applicable state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8303. Service Delivery

A. Louisiana's Act 421 Children's Medicaid Option delivery system is based on an integrated managed care model for physical and behavioral health services. Under this demonstration, Healthy Louisiana will continue to operate as approved in Section 1932(a) state plan authority for managed care and concurrent 1915(b) demonstration.

B. Enrollees in the 421-CMO program shall be mandatorily enrolled in Healthy Louisiana and in a dental benefits prepaid ambulatory health plan. They shall have the opportunity to choose a health and dental plan upon application. If they do not choose a plan, one will be automatically assigned to them upon enrollment per the current methodology outlined in the Medicaid State Plan.

C. Enrollees shall be designated as a special health care needs group, entitling recipients to receive case management and enhanced care coordination through their managed care plan.

D. All of the covered services under the 421-CMO program shall be delivered in accordance with the Medicaid State Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

Chapter 85. Reimbursement

§8501. Reimbursement Methodology

A. For 421-CMO program enrollees, LDH or its fiscal intermediary shall make monthly capitation payments to the managed care organizations (MCOs) and dental benefits prepaid ambulatory health plans for the provision of all covered services. The capitation rates paid to the MCOs and dental benefits prepaid ambulatory health plans shall be actuarially sound rates, and the MCOs and dental benefits prepaid ambulatory health plans will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid fee-for-service fee schedule on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services

(CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will provide access to Medicaid services for qualified children with disabilities.

#### **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 positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it provides access to Medicaid services for qualified children with disabilities.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule authorizes payments to providers for these services.

#### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of



the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



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

November 10, 2020

**Via Statutorily Prescribed Email**

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

**From:** Dr. Courtney N. Phillips  
Secretary

**Re:** Second Report on Proposed Amendments to LAC 50:XXXIII.6307 – Adult Mental Health Services Peer Support Services

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Adult Mental Health Services Peer Support Services rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1296). 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. Attached with this report are copies of the written comments for the record. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

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

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

**Cc:** Missy Graves, Program Manager, Office of Behavioral Health, LDH  
Karen Stubbs, Assistant Secretary, Office of Behavioral Health, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, 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 Behavioral Health**

**Adult Mental Health Services  
Peer Support Services  
(LAC 50:XXXIII.6307)**

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.6307 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.

On June 6, 2018, the Department of Health signed an agreement with the United States Department of Justice which requires the department to ensure that peer support specialists are incorporated into behavioral health services. Senate Concurrent Resolution (SCR) 84 of the 2019 Regular Session of the Louisiana Legislature requested the Department of Health to take all steps necessary to approve peer support services as a Medicaid covered service. In compliance with SCR 84 and the agreement with the United States Department of Justice, the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions governing adult mental health services in order to add peer

support services as a covered service.

**Title 50**  
**PUBLIC HEALTH-MEDICAL ASSISTANCE**  
**Part XXXIII. Behavioral Health Services**  
**Subpart 7. Adult Mental Health Services**

**Chapter 63. Services**

**§6307. Covered Services**

A. The following mental health services shall be reimbursed under the Medicaid Program:

1. ...
2. rehabilitation services, including community psychiatric support and treatment (CPST), ~~and~~ psychosocial rehabilitation (PSR), and peer support services; and

A.3. - B.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, LR 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1015 (June 2018), LR 46:795 (June 2020), repromulgated LR 46:952 (July 2020), amended LR 46:

Implementation of the provisions of this Rule may be

contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it provides access to peer support services.

#### **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 positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it provides access to peer support services.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule authorizes payments to providers for these services.

### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a



public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



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

November 10, 2020

**Via Statutorily Prescribed Email**

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

**From:** Dr. Courtney N. Phillips  
Secretary

**Re:** Second Report on Proposed Amendments to LAC 50:XXI.13701, 13902, 13927, 13933, and 14301 – Home and Community-Based Services Waivers New Opportunities Waiver Individual and Family Support Payments

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Home and Community-Based Services Waivers New Opportunities Waiver Individual and Family Support Payments rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1297). 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. Attached with this report are copies of the written comments for the record. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

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

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

**Cc:** Paul Rhorer, Program Manager, Office for Citizens with Disabilities, LDH  
Julie Foster Hagan, Assistant Secretary, Office for Citizens with Developmental Disabilities, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, 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  
New Opportunities Waiver  
Individual and Family Support Payments  
(LAC 50:XXI.13701,13902,13927,13933, and 14301)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.13701, \$13927, and \$14301, adopt \$13902, and repeal \$13933 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXI. Home and Community-Based Services Waivers**  
**Subpart 11. New Opportunities Waiver**

**Chapter 137. General Provisions**

**§13701. Introduction**

A. - D. ...

E. Only the following NOW services shall be provided for, or billed for, during the same hours on the same day as any other NOW service:

1. ...

2. supported independent living; and

3. ~~complex care~~ skilled nursing services.

a. Skilled nursing services may only be provided with:

i. substitute family care;

ii. supported independent living;

iii. day habilitation;

iv. supported employment (all three modules); and/or

v. prevocational services

~~4. skilled nursing services. Skilled nursing services may be provided with:~~

~~a. substitute family care;~~

~~b. supported independent living;~~

~~c. day habilitation;~~

~~d. supported employment (all three modules),~~  
~~and/or~~

~~e. prevocational services.~~ 4. - 4.e. Repealed.

F. - G. ...

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 Community  
Supports and Services, LR 30:1201 (June 2004), amended by the  
Department of Health and Hospitals, Office of the Secretary,  
Office for Citizens with Developmental Disabilities, LR 33:1647  
(August 2007), amended by the Department of Health and  
Hospitals, Bureau of Health Services Financing and the Office  
for Citizens with Developmental Disabilities, LR 40:68 (January  
2014), amended by the Department of Health, Bureau of Health  
Services Financing and the Office for Citizens with  
Developmental Disabilities, LR 44:50 (January 2018), LR 45:42  
(January 2019), LR 46:

## **Chapter 139. Covered Services**

### **\$13902 Individual and Family Support Supplemental Payments**

A. Supplemental payments will be made to licensed HCBS  
providers with a PCA module who support individuals currently  
receiving qualified waiver services who have complex medical  
and/or behavioral needs and are at a higher risk of  
institutionalization.

1. The integration of the supplemental payment provides additional funding to licensed HCBS providers with a PCA module who provide supports that focus on the prevention of deteriorating or worsening medical or behavioral conditions for individuals with complex needs.

2. The provider will be required to complete a screening tool and submit initial documentation as outlined in the program manual prior to qualifying for any supplemental payment. The supplemental payment will be re-evaluated annually to determine ongoing need per program requirements.

3. The PCA providers must be licensed home and community-based services (HCBS) providers with a personal care attendant module in order to receive the supplemental payment, in addition to the criteria listed in §13902 B.

B. Determination Process: A PCA provider can qualify for a supplemental payment if the individual currently receiving qualified waiver services has a complex medical and/or behavioral need.

1. Complex Medical

a. Individuals must require at least two of the following non-complex tasks delegated by a registered nurse to a non-licensed direct service worker:

i. suctioning of a clean, well-healed, uncomplicated mature tracheostomy in an individual who



has no cardiopulmonary problems and is able to cooperate with the person performing the suctioning (excludes deep suctioning);

ii. care of a mature tracheostomy site;

iii. removing/cleaning/replacing inner tracheostomy cannula for mature tracheostomy;

iv. providing routine nutrition, hydration or medication through an established gastrostomy or jejunostomy tube (excludes nasogastric tube);

v. clean intermittent urinary catheterization;

vi. obtaining a urinary specimen from a port of an indwelling urinary catheter;

vii. changing a colostomy appliance;

viii. ensuring proper placement of nasal cannula (excludes initiation/changing of flow rate;

ix. capillary blood glucose testing;

x. simple wound care (including non-sterile/clean dressing removal/application); or

xi. other delegable non-complex tasks as approved by OCDD in accordance with LAC 48:1 Chapter 92

#### Subchapter D.

### 2. Behavioral

a. The individual meets two of the following items:

i. specific behavioral programming/procedures are required, or the individual receives behavioral health treatment/therapy and needs staff assistance on a daily basis to complete therapeutic homework or use skills/coping mechanisms being addressed in therapy;

ii. staff must sometimes intervene physically with the individual beyond a simple touch prompt or redirect, or the individual's environment must be carefully structured based on professionally driven guidance/assessment to avoid behavior problems or minimize symptoms; or

iii. a supervised period of time away, outside of the individual's weekly routine, such as work, school or participation in his/her community, is needed at least once per week; and

b. the individual requires one of the following due to the items listed in a.-a.iii above:

i. higher credentialed staff (college degree, specialized licensing, such as registered behavior technician [RBT], applied behavior analysis [ABA], etc.), who have advanced behavioral training for working with individuals with severe behavioral health symptoms or significant experience working with this population; or

ii. the need for higher qualified supervision of the direct support of staff (master's degree,

additional certification, such as board certified behavior analyst [BCBA], etc.).

C. The supplemental payment is not allowed for waiver participants who do not receive individual and family support (IFS) services.

D. The supplemental payment may not be approved for waiver participants receiving IFS hours in addition to 12 or more hours of skilled nursing per day.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

**\$13927. Skilled Nursing Services**

A. - B. ...

C. Provider Qualifications. The provider must be licensed by the Department of Health as a home health agency ~~and community-based services provider and must meet the module specific requirements for the service being provided.~~

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 Community Supports and Services, LR 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary,

Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:77 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 46:

**§13933      Complex Care**

~~A. The complex care service provides additional support to individuals currently receiving qualified waiver services who have complex medical and/or behavioral needs, and are at a higher risk of institutionalization.~~

~~1. The integration of the complex care waiver service provides supports that focus on the prevention of deteriorating or worsening medical or behavioral conditions.~~

~~2. The complex care service will be re-evaluated to determine ongoing need.~~

~~B. Determination Process~~

~~1. Medical~~

~~a. Non-complex medical tasks must be delegated by a registered nurse to a non-licensed direct service worker (DSW) according to the provisions of LAC 48:I.Chapter 92, Subchapter D, Medication Administration and Nonecomplex Tasks in Home and Community-Based Settings.~~

~~\_\_\_\_\_ b. Individuals must require at least two of the following non-complex nursing tasks:~~

~~\_\_\_\_\_ i. suctioning of a clean, well-healed, uncomplicated mature tracheostomy in an individual who has no cardiopulmonary problems and is able to cooperate with the person performing the suctioning (excludes deep suctioning);~~

~~\_\_\_\_\_ ii. care of a mature tracheostomy site;~~

~~\_\_\_\_\_ iii. removing/cleaning/replacing inner tracheostomy cannula for mature tracheostomy;~~

~~\_\_\_\_\_ iv. providing routine nutrition, hydration or medication through an established gastrostomy or jejunostomy tube (excludes naso-gastrostomy tube);~~

~~\_\_\_\_\_ v. clean intermittent urinary catheterization;~~

~~\_\_\_\_\_ vi. obtaining a urinary specimen from a port of an indwelling urinary catheter; or~~

~~\_\_\_\_\_ vii. changing a colostomy appliance;~~

~~\_\_\_\_\_ viii. ensuring proper placement of nasal cannula (excludes initiation/changing of flow rate);~~

~~\_\_\_\_\_ ix. capillary blood glucose testing;~~

~~\_\_\_\_\_ x. simple wound care (including non-sterile/clean dressing removal/application);~~

~~\_\_\_\_\_ xi. Other delegable non-complex tasks as approved by OCDD; and~~



~~\_\_\_\_\_ e. documented evidence that home health/skilled nursing agencies cannot provide the service via other available options, such as the Medicaid State Plan.~~

~~\_\_\_\_\_ 2. Behavioral~~

~~\_\_\_\_\_ a. The individual meets two of the following items:~~

~~\_\_\_\_\_ i. specific behavioral programming/procedures are required, or the individual receives behavioral health treatment/therapy and needs staff assistance on a daily basis to complete therapeutic homework or use skills/coping mechanisms being addressed in therapy;~~

~~\_\_\_\_\_ ii. staff must sometimes intervene physically with the individual beyond a simple touch prompt or redirect, or the individual's environment must be carefully structured based on professionally driven guidance/assessment to avoid behavior problems or minimize symptoms; or~~

~~\_\_\_\_\_ iii. a supervised period of time away is needed at least once per week. This may manifest by the presence of severe behavioral health symptoms on a weekly basis that restricts the individual's ability to work, go to school and/or participate in his/her community; and~~

~~\_\_\_\_\_ b. The individual requires one of the following due to the items listed in a.-a.iii above:~~

~~\_\_\_\_\_ i. higher credentialed staff (college degree, specialized licensing, such as registered behavior~~

~~technician [RBT], applied behavior analysis [ABA], etc.),  
advanced behavioral training for working with individuals with  
severe behavioral health symptoms or significant experience  
working with this population; or~~

~~\_\_\_\_\_ ii. the need for higher qualified  
supervision of the direct support of staff (master's degree,  
additional certification, such as board certified behavior  
analyst [BCBA], etc.), and the expertise is not available  
through other professionals/services.~~

~~\_\_\_\_\_ C. Complex care is not a billable service for waiver  
participants who do not receive individual and family support  
services.~~

~~\_\_\_\_\_ D. Complex care service must be approved for waiver  
participants receiving IFS hours in addition to 12 or more hours  
of skilled nursing per day.~~

~~\_\_\_\_\_ E. Complex care service providers must be licensed home  
and community-based services (HCBS) providers with a personal  
care attendant module.~~ [Repealed.](#)

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

HISTORICAL NOTE: Promulgated by the Department of  
Health, Bureau of Health Services Financing and the Office for  
Citizens with Developmental Disabilities, LR 45:43 (January  
2019), repealed LR 46:

#### **Chapter 143. Reimbursement**

**§14301. Unit of Reimbursement**

A. - B.3. ...

C. The following services are paid through a per diem:

1.- 4. ...

5. ~~complex care~~ individual and family support  
supplemental payment.

D. - 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 of the Secretary, Bureau of Community  
Supports and Services, LR 30:1209 (June 2004), amended by the  
Department of Health and Hospitals, Office for Citizens with  
Developmental Disabilities, LR 34:252 (February 2008), amended  
by the Department of Health and Hospitals, Bureau of Health  
Services Financing and the Office for Citizens with  
Developmental Disabilities, LR 35:1851 (September 2009), LR  
36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April  
2013), LR 40:80 (January 2014), LR 42:898 (June 2016), amended  
by the Department of Health, Bureau of Health Services Financing  
and the Office for Citizens with Developmental Disabilities, LR  
44:58 (January 2018), LR 45:44 (January 2019), LR 46:

Implementation of the provisions of this Rule may be  
contingent upon the approval of the U.S. Department of Health  
and Human Services, Centers for Medicare and Medicaid Services



(CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is

anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and 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 providers for the same services they already render.

#### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen

Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



## State of Louisiana

Louisiana Department of Health  
Office of the Secretary

November 10, 2020

**Via Statutorily Prescribed Email**

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

**From:** Dr. Courtney N. Phillips  
Secretary

**Re:** Second Report on Proposed Amendments to LAC 48:II.9301 – Hospital 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 Hospital Licensing Standards rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1300). 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. Attached with this report are copies of the written comments for the record. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

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

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

**Cc:** Brenda Blanchard, RN, Program Manager, Health Standards Section, LDH  
Cecile Castello, Assistant Secretary, Health Standards Section, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

#### **Hospital Licensing Standards (LAC 48:II.9301)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:II.9301 as authorized by R.S. 36:254 and R.S. 40:2100-2115. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing hospital licensing standards in order to clarify the definition of licensed hospitals that are primarily engaged in providing inpatient hospital services and to identify those that are not subject to the primarily engaged provisions of the *Louisiana Administrative Code*.

## **Title 48**

### **PUBLIC HEALTH-GENERAL**

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

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

### **Chapter 93. Hospitals**

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

#### **§9301. Purpose**

A. - B. ...

C. Primarily Engaged

1. Except as provided in §9301.C.2, Hospitals  
hospitals shall be *primarily engaged*, as defined by this Rule and determined by the Department of Health, in providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. - b. ...

2. Exemptions. The following ~~licensed~~ licensed  
hospitals ~~designated as psychiatric hospitals and critical~~  
~~access hospitals as defined by the Code of Federal Regulations,~~  
~~and licensed hospitals designated as rural hospitals as defined~~  
~~by R.S. 40:1189.3,~~ are not subject to the primarily engaged  
provisions and/or requirements of this Chapter:-

a. a licensed hospital designated as a  
psychiatric hospital or a critical access hospital as defined by  
the Code of Federal Regulations;

b. a licensed hospital designated as a rural  
hospital as defined by R.S. 40:1189.3; and

c. a licensed hospital currently certified and  
enrolled as a Medicare/Medicaid certified hospital which has not  
been determined out of compliance with the federal definition of  
primarily engaged; if a hospital is currently Medicare/Medicaid

certified, and has been determined to be currently meeting the federal definition of primarily engaged, it shall be exempt from compliance with the following provisions in this section regarding primarily engaged.

C.3. - E.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2399 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1474 (October 2019), LR 46:

#### **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 in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for



submitting written comments is at close of business, 4:30 p.m., on October 30, 2020.

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking

for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



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

November 10, 2020

**Via Statutorily Prescribed Email**

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

A handwritten signature in blue ink, appearing to read "Courtney N. Phillips".

**From:** Dr. Courtney N. Phillips  
Secretary

**Re:** Second Report on Proposed Amendments to LAC 50:V.Chapters 5 and 9 – Inpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Inpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1302). 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. Attached with this report are copies of the written comments for the record. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

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

Please contact Andrew Perilloux, at [andrew.perilloux@la.gov](mailto:andrew.perilloux@la.gov), and Debbie Gough, at [debbie.gough@la.gov](mailto:debbie.gough@la.gov) if you have any questions or require additional information about this matter.

**Cc:** Andrew Perilloux, Medicaid Program Manager, LDH  
Debbie Gough, Medicaid Program Manager, LDH  
Daniel Cochran, Deputy Medicaid Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

#### **Inpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment (LAC 50:V.Chapters 5 and 9)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.Chapters 5 and 9 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.

House Concurrent Resolution (HCR) 2 of the 2020 First Extraordinary Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to adjust the reimbursement rates for inpatient hospital services. In compliance with the requirements of HCR 2, the department proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services in order to adjust the reimbursement rates.

## **Title 50**

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

#### **Part V. Hospital Services**

#### **Subpart 1. Inpatient Hospitals Services**

#### **Chapter 5. State Hospitals**

#### **Subchapter B. Reimbursement Methodology**

**§553. Inpatient Psychiatric Services for State Owned Hospitals**

A. - A.1. ...

B. Effective for dates of service on or after January 1, 2021, the prospective per diem rate paid to state owned free-standing psychiatric hospitals, and distinct part psychiatric units within state owned acute care hospitals, shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:1770 (December 2019), amended LR 46:

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§953. Acute Care Hospitals**

A. - W.2. ...

X. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

1. Small rural hospitals as defined in R.S. 40:1300 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

2. Carve-out specialty units, nursery boarder, and well-baby services are included in these rate increases.

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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1389 (July 2017), repromulgated LR 43:1757 (September 2017), amended LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019), LR:46:

**§955. Long-Term Hospitals**

A. - M. ...

N. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to long-term acute

hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019), LR 46:

**§959. Inpatient Psychiatric Hospital Services**

A. - O.2. ...

P. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

1. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.L of this

Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

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 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 39:94 (January 2013), LR 39:323 (February 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), amended LR 44:1446 (August 2018), LR 45:1771 (December 2019), LR 46:

**§961. Inpatient Rehabilitation Hospital Services**

A. - B.4. ...

5. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to non-rural, non-state free-standing rehabilitation hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:2533



(December 2017), amended LR 44:1446 (August 2018), LR 45:1771

(December 2019), LR 46:

**§967. Children's Specialty Hospitals**

A. - O. ...

P. Effective for dates of service on or after January 1, 2021, the inpatient per diem rates paid to children's specialty hospitals for acute, neonatal intensive care units, pediatric intensive care units and burn units' services shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

Q. Effective for dates of service on or after January 1, 2021, the inpatient per diem rates paid to distinct part psychiatric units within children's specialty hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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 36:2562 (November 2010), amended LR 37:2162, 2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended LR 40:1941 (October 2014), LR 42:275 (February 2016), amended by the Department of Health, Bureau of Health Services

Financing, LR 43:964 (May 2017), LR 45:1771 (December 2019), LR 46:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **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 Statement**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that

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

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and 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 providers.

#### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set

forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



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

November 10, 2020

**Via Statutorily Prescribed Email**

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

A handwritten signature in blue ink, appearing to read "C. Phillips", with a long horizontal line extending to the right.

**From:** Dr. Courtney N. Phillips  
Secretary

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

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Nursing Facilities Optional State Assessment rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1305). 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. 49:968B-C was submitted.

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

Please contact Andrew Perilloux, at [andrew.perilloux@la.gov](mailto:andrew.perilloux@la.gov), and Denis Beard, at [denis.beard@la.gov](mailto:denis.beard@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Andrew Perilloux, Medicaid Program Manager, LDH  
Denis Beard, Medicaid Program Manager, LDH  
Daniel Cochran, Deputy Medicaid Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

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

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.10123 and 20001 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq.

In compliance with the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Health, Bureau of Health Services Financing amended the provisions governing nursing facility reimbursements in order to mandate the use of the optional state assessment item set to replace Medicare prospective payment system assessments retired by CMS due to the implementation of the patient driven payment model (*Louisiana Register*, Volume 46, Number 5). The department now proposes to amend the provisions governing nursing facility reimbursements in order to remove the requirements of the May 20, 2020 Rule for the optional state assessment item from the *Louisiana*

Administrative Code due to the decision by CMS to delay implementation of the patient driven payment model.

**Title 50**

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

**Chapter 101. Standards for Payment for Nursing Facilities**

**Subchapter D. Resident Care Services**

**§10123. Comprehensive Assessment**

A. - G.4.c. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended by the Department of Health, Bureau of Health Services Financing, LR 46:695 (May 2020), LR 46:

## **Subpart 5. Reimbursement**

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

#### **§20001. General Provisions**

##### **A. Definitions**

\*\*\*

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

\*\*\*

B. - C.7. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health



Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1522 (September 2016), LR 43:525 (March 2017), LR 43:2187 (November 2017), LR 46:695 (May 2020), LR 46:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty

in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



## State of Louisiana

Louisiana Department of Health  
Office of the Secretary

November 10, 2020

**Via Statutorily Prescribed Email**

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

**From:** Dr. Courtney N. Phillips  
Secretary

**Re:** Second Report on Proposed Amendments to LAC 50:II.20005 – Nursing Facilities – Reimbursement Methodology

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Health Standards Section, submits its second report regarding the proposed – Nursing Facilities – Reimbursement Methodology rule amendment. A Notice of Intent on the proposed amendments was published in the September 20, 2020, issue of the *Louisiana Register* (LR 46:1306). Written comments were received during the public comment period and an agency response was issued to the comments. A public hearing was held on October 29, 2020, at 9:30 a.m. via a Zoom meeting, persons from the public attended the hearing and oral testimony was given at the hearing. Additionally, no substantive changes were made to the proposed amendments since the report provided for in R.S. 49:968B-C was submitted.

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

Please contact Andrew Perilloux, at [andrew.perilloux@la.gov](mailto:andrew.perilloux@la.gov), and Denis Beard, at [denis.beard@la.gov](mailto:denis.beard@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Andrew Perilloux, Medicaid Program Manager, LDH  
Denis Beard, Medicaid Program Manager, LDH  
Daniel Cochran, Deputy Medicaid Director, LDH  
Veronica Dent, Medicaid Program Manager, Policy and Waivers, LDH  
Anita Dupuy, Legislative Liaison, LDH  
Catherine Brindley, *Louisiana Register* Editor, Office of the State Register

**NOTICE OF INTENT**

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

**Nursing Facilities  
Reimbursement Methodology  
(LAC 50:II.20005)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950, et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to increase the allowable square footage for calculating payments when a Medicaid participating nursing facility has at least 15 percent of its licensed beds in private rooms.

**Title 50**

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

**Chapter 200. Reimbursement Methodology**

**§20005. Rate Determination**

A. - D.3.b. ...

i. Each nursing facility's actual square footage per bed is multiplied by the January 1, 2003 new value per square foot, plus \$9.75 for land. The square footage used shall not be less than 300 square feet or more than 450 square feet per licensed bed. If 15 percent or more of the nursing facility's licensed beds are private rooms compared to the total licensed beds of the nursing facility, then the maximum square footage used shall not be more than 550 square feet per licensed bed. To this value add the product of total licensed beds times \$4,000 for equipment, sum this amount and trend it forward using the capital index. This trended value shall be depreciated, except for the portion related to land, at 1.25 percent per year according to the weighted age of the facility. Bed additions, replacements and renovations shall lower the weighted age of the facility. The maximum age of a nursing facility shall be 30 years. Therefore, nursing facilities shall not be depreciated to an amount less than 62.5 percent or  $[100 \text{ percent} \text{ minus } (1.25 \text{ percent} \times 30)]$  of the new bed value. There shall be no recapture of depreciation.

ii. - Q. ...

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:902 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:3097, 3097 (November 2013), LR 41:707 (April 2015), LR 41:949 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:82 (January 2017), LR 43:526 (March 2017), LR 46:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**



In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and 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 providers for the same services they already render.

### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking

for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary



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

**PUBLIC HEARING CERTIFICATION**  
**October 29, 2020**  
**9:30 a.m.**

RE: Nursing Facilities - Reimbursement Methodology  
Docket # 10292020-01  
Department of Health  
State of Louisiana

**CERTIFICATION**

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted on October 29, 2020 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

*Robert K. Andrepont*

Medicaid Policy and Compliance  
Section

10/29/20  
Date

**LOUISIANA DEPARTMENT OF HEALTH  
BUREAU OF HEALTH SERVICES FINANCING  
ZOOM PUBLIC HEARING ATTENDEES 10/29/2020 @ 9:30 AM**

|     | <b>NAME</b>       | <b>REPRESENTING</b>   |
|-----|-------------------|---|
| 1.  | Veronica Dent     | Louisiana Department of Health                                      |
| 2.  | Denise Bottcher   | State Director, AARP Louisiana                                      |
| 3.  | Jan Moller        | Executive Director, Louisiana Budget Project                        |
| 4.  | Tory Rocca        | Director of Public Policy, Disability Rights Louisiana              |
| 5.  | Andrew Muhl       | Associate State Director of Advocacy, AARP Louisiana                |
| 6.  | Catherine Mellott | Myers and Stauffer  |
| 7.  | Yolanda Ellis     | Louisiana Department of Health                                      |
| 8.  | Robert Andrepont  | Louisiana Department of Health                                      |
| 9.  | Layne Janet       | Louisiana Department of Health – Office of Aging and Adult Services |
| 10. | Selena Sims       | Louisiana Department of Health                                      |
| 11. | Carol Jenkins     | Louisiana Department of Health                                      |
| 12. | Allen Enger       | Louisiana Department of Health                                      |
| 13. | Kirsten Clebert   | Louisiana Department of Health – Office of Aging and Adult Services |
| 14. | Theresa Bryan     | Louisiana Department of Health                                      |
| 15. | Abigail Holden    | AARP of Louisiana   |
| 16. | Karen Barnes      | Louisiana Department of Health – Policy and Compliance              |
| 17. | Sherlyn Sullivan  | Louisiana Department of Health – Office of Aging and Adult Services |
| 18. | MBallard          | Attendee not identified during roll call                            |
| 19. | Shelby McCarty    | Attendee not identified during roll call                            |

## SUMMARY OF PUBLIC HEARING TESTIMONY

**Proposed Rule:** Nursing Facilities - Reimbursement Methodology  
**Public Hearing Date:** October 29, 2020  
**Docket No. :** 10292020-01  
**Conducted By:** Louisiana Department of Health, Bureau of Health Services Financing Staff

| Oral Testimony Given By | Organization Represented                            | Summary of Comments  |
|-------------------------|---|--|
| Tory Rocca              | Director Public Policy Disability Rights, Louisiana | <p>Opposed the Notice of Intent and is concerned that putting more money in nursing homes in taking the state in the wrong direction from where it should be going.</p> <ol style="list-style-type: none"> <li>1. Supports more home and community-based care for senior citizens.</li> <li>2. Most people would prefer to receive care in their home and community than to be confined in a nursing facility and this would cost the state less and saves the state money.</li> <li>3. A study to confirm the cost saving to the state was blocked.</li> <li>4. More people are being directed to nursing homes when they are much safer in non-congregate settings</li> <li>5. Nursing homes are providing a lower quality of life compared to being in their home.</li> <li>6. With the state possibly facing upcoming serious budget issues the state is directing more money into nursing homes rather than toward keeping people in their homes.</li> </ol>  |
| Jan Moller              | Executive Director Louisiana Budget Project         | <p>Opposed the Notice of Intent. Concerned that this rule has to do with the broader fiscal crisis that the state is facing.</p> <ol style="list-style-type: none"> <li>1. Louisiana is likely to experience a significant state budget shortfall as a result of the COVID-19 pandemic which will threaten the state's ability to provide essential services to low-income populations through the Medicaid program which is the largest in state government.</li> <li>2. At this difficult time the last thing that the state should be doing is spending more dollars on entities already receiving special treatment in the Medicaid budget.</li> <li>3. Nursing homes have done better than other health care providers in the Medicaid budget in recent years.</li> <li>4. Nursing home rates have risen 54% between 2006-2016 and they continue to rise since then.</li> <li>5. The rates for nursing homes have crowded out home and community-based services.</li> <li>6. Louisiana will be paying more money on services and are not providing better care and taking away from people who are on a waiting list to receive services where they live and not in an institution.</li> <li>7. Those who rely on discretionary state general funds will have to come up with creative ways to make sure that services are maintained for those who are low-income and vulnerable.</li> </ol> |

|                 |                                   |   |
|-----------------|-----------------------------------|---|
| Denise Bottcher | State Director AARP,<br>Louisiana | <p>Opposed the Notice of Intent rule change.</p> <ol style="list-style-type: none"> <li>1. The Rule allows for facilities that have more than 15 percent of their beds as private rooms to increase the square footage allowed from 450 square feet to 550 square feet. It appears that this new number applies to all beds and not just private rooms and it's unclear if these beds are Medicaid, Medicare, Private rooms or all of the above.</li> <li>2. Louisiana nursing homes rating is amongst the lowest in the nation. There has been a continuous rise of reimbursement, yet the occupancy rates have remained the same or decreased.</li> <li>3. More money is spent on nursing homes than on home and community-based services for people who want to stay at home and live.</li> <li>4. Why are we using limited resources and limited funding to increase nursing expenditures when occupancy rates have decreased due to the pandemic?</li> <li>5. This rule furthers Louisiana's over reliance on nursing homes rather than providing more options for Louisianans to age at home. Single occupancy rooms are associated with much better outcomes. During COVID-19 single occupancy supports less mortality, but this rule is not tied to quality. Louisiana scores at or near the bottom and this rule is a guarantee payment rather than on leverage.</li> <li>6. 90% of Louisiana's residents wants to age in place (in their own home and in their community), yet, Louisiana is spending less on in home care for older adults than it was a decade ago.</li> <li>7. The state's percent for Medicaid spending to nursing homes versus home and community-based services is less than the national average and it's going in the wrong direction.</li> <li>8. If this rule is implemented nursing home payments would increase by \$5 million dollars for just one year. It would be wiser and prudent to spend our precious taxpayer dollars to serve 200 individuals in home care. Greatest hope is that the department would withhold this rule.</li> </ol> |
|-----------------|-----------------------------------|---|

## SUMMARY OF WRITTEN COMMENTS

**Proposed Rule:** Nursing Facilities - Reimbursement Methodology  
**Public Hearing Date:** October 29, 2020  
**Docket No. :** 10292020-01  
**Conducted By:** Louisiana Department of Health, Bureau of Health Services Financing Staff

| Written Comments Received From  | Mode of Receipt | Summary of Comments  |
|---|-----------------|--|
| Mark D. Berger,<br>CPA CGMA<br>Executive Director<br>Louisiana Nursing Home Association | Mail            | <p>Supports this rule.</p> <ol style="list-style-type: none"> <li>1. When the nursing facility reimbursement statute was passed in 2001, it allowed for an increase in the maximum square footage per licensed nursing facility bed for private rooms in nursing facilities. The statute includes the language to waive the 450 square foot maximum for private rooms. Private rooms require more square footage than semi-private rooms.</li> <li>2. Clinical studies have shown that a resident in a private room has better clinical outcomes when compared to semi-private rooms. A private room improves their quality of life.</li> <li>3. The COVID-19 pandemic has greatly demonstrated the need for more private rooms in nursing facilities. The nursing facilities with private rooms can better isolate COVID-19 positive residents, cohering residents who were asymptomatic and reduce the potential spread through reduced contact with other potentially positive COVID-19 residents.</li> <li>4. The 450 square footage maximum was established in 2001. Federal and state regulatory requirements have driven nursing facilities to have spaces for large therapy gyms to improve resident outcomes. In addition, more space is required to accommodate a greater number of staff, which is needed to complete significant documentation requirements.</li> <li>5. Nursing facilities that have rebuilt with private rooms range in size from approximately 530 square feet per bed to 750 square feet per bed. Increasing the maximum square footage to 550 square feet per bed will encourage nursing facility operators to continue to add private rooms, thereby improving health outcomes for the nursing facility residents of our state while still maintaining the efficiency for the Medicaid program by establishing a reasonable size limit.</li> </ol> |
| Denise Bottcher   | Mail            | <p>Strongly urge you to reconsider this rule.</p> <ol style="list-style-type: none"> <li>1. The net impact as noted in the Fiscal Statement, is that payments to nursing homes will increase by over \$5 million dollars in fiscal year 20-21 and rising closer to \$6 million by fiscal year 22-23.</li> <li>2. Concerned that monies will be diverted from other critical programming, therefore, opposes this rule for the following reasons:               <ol style="list-style-type: none"> <li>a. Nursing homes are well funded. Medicaid payments to nursing homes have risen by \$375 million in the past ten years, according to LDH reports. This is more than the total annual</li> </ol> </li> </ol>  |



|   |      |   |
|---|------|---|
|   |      | <p>spending on home and community based services (HCBS) for the nursing home eligible population.</p> <p>b. This rule furthers Louisiana's over reliance on nursing home rather than providing more options for Louisiana residents to age at home.</p> <p>c. This rule is not tied to performance measures like quality of care, choice of setting or effective transitions for which Louisiana scores at or near the bottom.</p>  |
| <p>David Kneipp<br/>President/CEO<br/>Volunteers of America<br/>Baton Rouge, Inc.</p>       | Mail | <p>Please reconsider the wisdom of adopting this rule. Volunteers of America of Southeast Louisiana joins with Live At Home Louisiana partners in opposing this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. According to the LA Legislative Auditor, very little of this increase in nursing home spending is due to higher occupancy. The increase is almost all driven by rate increases.</li> <li>2. Louisiana is spending less on Home and Community Based Services (HCBS) for this population than it was a decade ago. Only recently has HCBS providers had their reimbursement rates restored to what they were more than a decade ago.</li> <li>3. The state's percentage of Medicaid spending going to HCBS versus nursing homes is less than half the national average and going in the wrong direction.</li> <li>4. This rule will do nothing to improve quality or patient care ad it will probably add to what the state already pays for "empty beds." It seems to serve no public purpose, but only to add to facilities revenue.</li> <li>5. According to LDH reports there are over 11,000 people on a waiting list for waiver services. The \$5 million dollars would fund approximately 200 waiver slots and this would be a small step toward addressing the waiting list. This seems to be more appropriate to spend that money on serving people rather than paying for square footage.</li> <li>6. Giving more money will only make the budget cuts that fall on other services even more severe.</li> </ol> |
| <p>James M. LeBlanc<br/>President/CEO<br/>Volunteers of America<br/>Southeast Louisiana</p> | Mail | <p>Please reconsider the wisdom of adopting this rule. Volunteers of America of Southeast Louisiana joins with Live At Home Louisiana partners in opposing this rule for the following reasons:</p> <ol style="list-style-type: none"> <li>1. According to the LA Legislative Auditor, very little of this increase in nursing home spending is due to higher occupancy. The increase is almost all driven by rate increases.</li> <li>2. Louisiana is spending less on Home and Community Based Services (HCBS) for this population than it was a decade ago. Only recently has HCBS providers had their reimbursement rates restored to what they were more than a decade ago.</li> <li>3. The state's percentage of Medicaid spending going to HCBS versus nursing homes is less than half the national average and going in the wrong direction.</li> <li>4. This rule will do nothing to improve quality or patient care, yet, it will probably add to what the state already pays for "empty beds."</li> <li>5. This rule seems to serve no public purpose, but only to add to nursing facilities revenue.</li> <li>6. There are over 11,000 people on a waiting list for waiver services. The \$5 million dollars would fund approximately 200 waiver slots and this would be a small step toward addressing the waiting list. This would seem to be more appropriate to spend that money on serving people rather than paying for square footage.</li> </ol>  |

|   |      |  |
|---|------|--|
|   |      | <p>7. Giving nursing facilities more money will only make the budget cuts that fall on other services even more severe.</p>  |
| <p>Charles Meehan<br/>President/CEO<br/>Volunteers of America<br/>North Louisiana</p> | Mail | <p>Please reconsider the wisdom of adopting this rule.</p> <ol style="list-style-type: none"> <li>1. Concerned that the net impact of this square footage increase will continue to grow each year.</li> <li>2. According to the LA Legislative Auditor, very little of this increase in nursing home spending is due to higher occupancy. The increase is almost all driven by rate increases,</li> <li>3. Louisiana is spending less on Home and Community Based Services (HCBS) for this population than it was a decade ago. Only recently has HCBS providers had their reimbursement rates restored to what they were more than a decade ago. The state's percentage of Medicaid spending going to HCBS versus nursing homes is less than half the national average and going in the wrong direction.</li> <li>4. This rule will do nothing to improve quality or patient care, yet, it will probably add to what the state already pays for "empty beds."</li> <li>5. This rule seems to serve no public purpose, but only to add to nursing facilities revenue.</li> <li>6. There are over 11,000 people on a waiting list for waiver services. The \$5 million dollars would fund approximately 200 waiver slots and this would be a small step toward addressing the waiting list. This would seem to be more appropriate to spend that money on serving people rather than paying for square footage.</li> <li>7. Giving nursing facilities more money will only make the budget cuts that fall on other services even more severe.</li> </ol> |
| <p>Jan Moller,<br/>Executive Director<br/>LA Budget Project</p>                       | Mail | <p>Opposed the notice of intent.</p> <ol style="list-style-type: none"> <li>1. Believes that Louisiana will likely experience a significant budget shortfall as a result of the COVID-19 pandemic. This will imperil the state's ability to provide essential services to low-income populations through the Medicaid program.</li> <li>2. According to the Legislative Auditor overall Medicaid spending on nursing home program has grown by more than \$375 million over the past decade. Nursing home rates have risen 54% between 2006-2016 and they have continued to rise since then. This increased spending has very little is due to higher occupancy. It is almost entirely driven by rate increases.</li> <li>3. The extra spending on nursing homes is crowding out the state's ability to provide for people who seek at home care.</li> <li>4. There is no evidence that this rule change will improve quality of care for nursing home patients. Louisiana will simply be paying more for the same service and simply leaving the taxpayers paying more for empty beds.</li> <li>5. This rule will require state agencies to find creative ways of ensuring that low-income, vulnerable Louisiana residents have access to vital healthcare services while the state lives within its means.</li> <li>6. The last thing the state should be doing in paying more money to nursing homes.</li> </ol>  |
| <p>Tory Rocca</p>   | Mail | <p>Disability Rights of Louisiana opposes the adoption of this proposed rule because they empower members of communities to allow them to live an integrated life, free from abuse, neglect and exploitation.</p> <ol style="list-style-type: none"> <li>1. Concerned that the net impact of this square footage increase will continue to grow each year.</li> </ol>  |

|  |  |  |
|--|--|--|
|  |  | <p>2. Believes that this rule change seems to have no other purpose than to add to the profits of business entities that have a financial interest in removing senior citizens from their homes and communities.</p> <p>3. This proposed rule would move the State of Louisiana in the wrong direction for the financial benefit of businesses that are already well-funded.</p> <p>4. Providing care through Home and Community Care Services (HCBS) cost less than forcing senior citizens into congregate facilities in order to receive care.</p> <p>5. The pandemic has underscored the increased risk of infection involved in congregate facilities.</p> <p>6. There appears to be no justification for the State giving more money to businesses that provide a lower quality of life to senior citizens compared to those staying at home.</p> <p>7. Louisiana's continue shift of more financial resources into congregate facilities at the expense of HCBS leaves many senior citizens with no option but to be places into such facilities to receive care.</p> |
|--|--|--|

John Bel Edwards  
GOVERNOR



Dr. Courtney N. Phillips  
SECRETARY

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

November 5, 2020

Mark D. Berger  
Louisiana Nursing Home Association  
7844 Office Park Blvd.  
Baton Rouge, LA 70809

Dear Mr. Berger:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

This letter is in response to your correspondence regarding the Notice of Intent for Reimbursement Methodology (LAC 50:II.20005) which was published in the September 2020 edition of the *Louisiana Register*.

The Notice of Intent proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to increase the allowable square footage for calculating payments when a Medicaid participating nursing facility has at least 15 percent of its licensed beds in private rooms. The public hearing for this proposed Rule was held on Thursday, October 29, 2020 at 9:30 a.m. via a Zoom meeting.

The department seeks to ensure that all long-term care clients receive the highest quality of care and best health outcomes in all of the programs that we oversee. The department is committed to ensuring that clients have choice appropriate to their level of care which supports their needs and individual circumstances throughout the continuum of care. We have received and reviewed your comments and will take them into consideration as we move forward through the administrative rule process.

I would like to thank you for taking the time to provide comments and hope that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact 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, reading "Tara A. LeBlanc".

Tara A. LeBlanc  
Interim Medicaid Executive Director



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

November 6, 2020

Tory Rocca  
Disability Rights Louisiana  
8325 Oak St.  
New Orleans, LA 70118

Dear Mr. Rocca:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

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Tara A. LeBlanc  
Interim Medicaid Executive Director



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

November 5, 2020

James M. LeBlanc  
Volunteers of America Southeast Louisiana  
4152 Canal St.  
New Orleans, LA 70119

Dear Mr. LeBlanc:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

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Tara A. LeBlanc  
Interim Medicaid Executive Director



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

November 6, 2020

Denise Bottcher  
AARP Louisiana  
301 Main Street, #1012  
Baton Rouge, LA 70825

Dear Ms. Bottcher:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

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Tara A. LeBlanc  
Interim Medicaid Executive Director

John Bel Edwards  
GOVERNOR



Dr. Courtney N. Phillips  
SECRETARY

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

November 5, 2020

Charles Meehan  
Volunteers of America North Louisiana  
360 Jordan Street  
Shreveport, LA 71101

Dear Mr. Meehan:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

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Tara A. LeBlanc  
Interim Medicaid Executive Director



John Bel Edwards  
GOVERNOR



Dr. Courtney N. Phillips  
SECRETARY

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

November 6, 2020

Jan Moller  
Louisiana Budget Project  
619 Jefferson Hwy, 1-D  
Baton Rouge, LA 70806

Dear Mr. Moller:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

This letter is in response to your correspondence regarding the Notice of Intent for Reimbursement Methodology (LAC 50:II.20005) which was published in the September 2020 edition of the *Louisiana Register*.

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Tara A. LeBlanc  
Interim Medicaid Executive Director

John Bel Edwards  
GOVERNOR



Dr. Courtney N. Phillips  
SECRETARY

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

November 5, 2020

David K. Kneipp  
Volunteers of America Greater Baton Rouge  
3949 North Boulevard  
Baton Rouge, LA 70806

Dear Mr. Kneipp:

**RE: Notice of Intent for Nursing Facilities - Reimbursement Methodology (LAC 50:II.20005)**

This letter is in response to your correspondence regarding the Notice of Intent for Reimbursement Methodology (LAC 50:II.20005) which was published in the September 2020 edition of the *Louisiana Register*.

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Sincerely,

A handwritten signature in black ink, reading "Tara A. LeBlanc".

Tara A. LeBlanc  
Interim Medicaid Executive Director



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

November 10, 2020

**Via Statutorily Prescribed Email**

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

**From:** Dr. Courtney N. Phillips  
Secretary

**Re:** Second Report on Proposed Amendments to LAC 50:V.5313, 5319, and 5715 – Outpatient Hospital Services Non- Rural, Non-State Hospitals Reimbursement Rate Adjustment

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Inpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment rule amendment.

A Notice of Intent on the proposed amendments was published in the September 20, 2020 issue of the *Louisiana Register* (LR 46:1308). 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. Attached with this report are copies of the written comments for the record. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

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

Please contact Andrew Perilloux, at [andrew.perilloux@la.gov](mailto:andrew.perilloux@la.gov), and Marcia Lemelle, at [marcia.lemelle@la.gov](mailto:marcia.lemelle@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Andrew Perilloux, Medicaid Program Manager, LDH  
Marcia Lemelle, Medicaid Program Manager, LDH  
Daniel Cochran, Deputy Medicaid Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Anita Dupuy, 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 Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment (LAC 50:V.5313, 5319, and 5715)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, §5319, and §5715 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.

House Concurrent Resolution (HCR) 2 of the 2020 First Extraordinary Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to adjust the reimbursement rates for outpatient hospital services. In compliance with the requirements of HCR 2, the department proposes to amend the provisions governing the reimbursement methodology for outpatient hospital services in order to adjust the reimbursement rates.

### **Title 50**

#### **PUBLIC HEALTH-MEDICAL ASSISTANCE Part V. Hospital Services Subpart 5. Outpatient Hospital Services**

#### **Chapter 53. Outpatient Surgery**

#### **Subchapter B. Reimbursement Methodology**

**5313. Non-Rural, Non-State Hospitals**

A. - L.1. ...

M. Effective for dates of service on or after January 1, 2021, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be increased by 3.2 percent of the rates on file as of December 31, 2020.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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 Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2534 (December 2017), LR 44:2166 (December 2018), LR 45:1773 (December 2019), LR 46:

**§5319. State-Owned Hospitals**

A. - C. ...

D. Effective for dates of services on or after January 1, 2021, the reimbursement rates paid to state-owned hospitals for

outpatient surgery shall be increased by 3.2 percent of the fee schedule rates on file as of December 31, 2020.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2773 (November 2012), amended LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1773 (December 2019), LR 46:

## **Chapter 57. Laboratory Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5715. State-Owned Hospitals**

A. - B. ...

C. Effective for dates of service on or after January 1, 2021, the reimbursement rates paid to state-owned hospitals for outpatient laboratory services shall be reimbursed at 100 per cent of the current Medicare clinical laboratory fee schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 Service Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:315 (February 2014), LR 46:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **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 Statement**

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and 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 providers.

### **Public Comments**

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a



public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary