



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

November 10, 2022

**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 LAC 50:XV.7107 – Early and Periodic Screening, Diagnosis and Treatment Health Services – EarlySteps Reimbursement Rate Increase

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Early and Periodic Screening, Diagnosis and Treatment Health Services – EarlySteps Reimbursement Rate Increase, LAC 50:XV.7107.

A Notice of Intent on the proposed amendments was published in the September 20, 2022 issue of the *Louisiana Register* (LR 48:2414). 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, 2022, Notice of Intent when it is published as a final rule in the December 20, 2022, issue of the *Louisiana Register*.

Please contact Brenda Sharp, [Brenda.Sharp@la.gov](mailto:Brenda.Sharp@la.gov), and Carol Lee, at [Carol.Lee@la.gov](mailto:Carol.Lee@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Julie Foster Hagan, OCDD Assistant Secretary, LDH  
Tara LeBlanc, Medicaid Director, LDH  
Dr. Shannon Bibbins, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

#### **Early and Periodic Screening, Diagnosis and Treatment Health Services EarlySteps Reimbursement Rate Increase (LAC 50:XV.7107)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XV.7101 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.

Act 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health to increase reimbursement rates paid for certain services rendered to infants and toddlers in the EarlySteps Program within the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. In compliance with Act 199, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing EPSDT EarlySteps services in order to increase reimbursement for certain services (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the July 31, 2022 Emergency Rule.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

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

#### **Chapter 71. Health Services**

#### **§7107. EarlySteps Reimbursement**

A. Effective for dates of service on or after January 1, 2011, the reimbursement for certain Medicaid-covered health services rendered in the EarlySteps Program shall be reduced by 2 percent of the rate in effect on December 31, 2010.

1. The following services rendered in the natural environment shall be reimbursed at the reduced rate:

- a. audiology services:

- b. speech pathology services;
- c. occupational therapy;
- d. physical therapy; and
- e. psychological services.

2. Services rendered in special purpose facilities/inclusive child care and center-based special purpose facilities shall be excluded from this rate reduction.

B. Effective for dates of service on or after July 1, 2022, the reimbursement for Medicaid covered health services rendered in the EarlySteps Program (Part C of IDEA) shall be increased by 30 percent of the rate in effect on January 1, 2011.

1. The increased rate shall be applied to services provided in the following settings:

a. natural environment that includes a child's home and settings in the community where children of the same age with no disabilities or special needs participate;

b. special purpose facility/inclusive child care that includes settings such as a child care center, nursery schools, or preschools where at least 50 percent of the children have no disabilities or developmental delays, and

c. center-based special purpose facility that is a facility where only children with disabilities or developmental delays are served.

2. The following services shall be reimbursed at the increased rate:

- a. audiology services;
- b. speech language pathology services;
- c. occupational therapy;
- d. physical therapy; and
- e. psychological services.

C. - C.2. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:800 (April 2004), amended LR 31:2030 (August 2005), LR 35:69 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1599 (June 2011), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

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 or autonomy as described in R.S. 49:972 by ensuring continued provider participation in the Medicaid Program.

#### **Poverty Impact Statement**

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

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses.

#### **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 services they already render.

#### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. 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 27, 2022 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 10, 2022. 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

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

**RULE TITLE: Early and Periodic Screening, Diagnosis and Treatment—Health Services  
EarlySteps Reimbursement Rate Increase**

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$4,173,484 for FY 22-23, \$4,323,394 for FY 23-24, and \$4,479,036 for FY

24-25. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$2,152,816 for FY 22-23, \$2,229,982 for FY 23-24, and \$2,310,261 for FY 24-25. It is anticipated that \$324 will be collected in FY 22-23 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the July 31, 2022 Emergency Rule, which increased reimbursement rates for certain Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services rendered to infants and toddlers in the EarlySteps Program. The increased reimbursement resulting from this proposed rule will ensure that EPSDT providers continue rendering services to EarlySteps beneficiaries in the Medicaid Program. Implementation of this proposed rule is anticipated to increase payments for EarlySteps services by approximately \$6,325,652 for FY 22-23, \$6,553,376 for FY 23-24, and \$6,789,297 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2209#041

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office



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

November 10, 2022

**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 LAC 50:VII.32917 – Intermediate Care Facilities for Persons with Intellectual Disabilities – Dedicated Program Funding Pool Payments

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Intermediate Care Facilities for Persons with Intellectual Disabilities – Dedicated Program Funding Pool Payments, LAC 50:VII.32917.

A Notice of Intent on the proposed amendments was published in the September 20, 2022 issue of the *Louisiana Register* (LR 48:2432). 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, 2022, Notice of Intent when it is published as a final rule in the December 20, 2022, issue of the *Louisiana Register*.

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

**Cc:** Tara LeBlanc, Medicaid Director, LDH  
Daniel Cocran, LDH Medicaid Deputy Director  
Dr. Shannon Bibbins, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## **NOTICE OF INTENT**

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

#### **Intermediate Care Facilities for Persons with Intellectual Disabilities Dedicated Program Funding Pool Payments (LAC 50:VII.32917)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32917 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.

Act 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health for supplemental payments to non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID). In compliance with Act 199, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement to ICFs/IID in order to allow a one-time, lump sum payment from the dedicated program funding pool (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the July 31, 2022 Emergency Rule.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part VII. Long-Term Care**

#### **Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities**

#### **Chapter 329. Reimbursement Methodology**

#### **Subchapter A. Non-State Facilities**

#### **§32917. Dedicated Program Funding Pool Payments**

##### **A. - B.5. ...**

C. Effective for providers active and Medicaid certified as of July 1, 2022, a one-time, lump sum payment will be made to non-state, non-public intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).

##### **1. Methodology**

a. Payment will be based on each provider's specific pro-rated share of an additional dedicated program funding pool totaling \$27,974,178.

b. The pro-rated share for each provider will be determined utilizing the provider's percentage of program Medicaid days for dates of service in a three consecutive month period selected by the department occurring between January 1, 2022 and December 31, 2022.

c. If the additional dedicated program funding pool lump sum payments exceed the Medicare upper payment limit in the aggregate for the provider class, the department shall recoup the overage using the same means of distribution in §32917.C.1.b above.

d. The one-time payment will be made on or before June 30, 2023.

e. All facilities receiving payment shall be open and operating as an ICF/IID at the time the payment is made.

f. Payment of the one-time, lump sum payment is subject to approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

**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 46:28 (January 2020, amended LR 48:

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 by ensuring continued provider participation in the Medicaid Program.

##### **Poverty Impact Statement**

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

## **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

## **Provider Impact Statement**

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

## **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

## **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. 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 27, 2022 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 10, 2022. 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

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

### **RULE TITLE: Intermediate Care Facilities for Persons with Intellectual Disabilities Dedicated Program Funding Pool Payments**

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

It is anticipated that implementation of this proposed rule will have state programmatic fiscal costs of approximately

\$19,308,102 for FY 22-23, but will not result in costs for FY 23-24 and FY 24-25, as these one-time, lump sum payments will be made from funds appropriated during the 2022 Legislative Session. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$8,666,724 for FY 22-23, but will not result in increases for FY 23-24 and FY 24-25. It is anticipated that \$324 will be collected in FY 22-23 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the July 31, 2022 Emergency Rule, which amended the reimbursement methodology for non-state, non-public intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to allow a one-time, lump sum payment from the dedicated program funding pool. This proposed rule will enable qualifying ICFs/IID that receive enhanced reimbursement via these one-time, lump sum payments to continue to provide necessary services to Medicaid beneficiaries. It is anticipated that implementation of this proposed rule will result in increased expenditures for ICF/IID services of approximately \$27,974,178 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2209#049

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office





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

November 10, 2022

**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 LAC 48:I.Chapter 52 – Pediatric Day Health Care – 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 Pediatric Day Health Care – Licensing Standards, LAC 48:I.Chapter 52.

A Notice of Intent on the proposed amendments was published in the September 20, 2022 issue of the *Louisiana Register* (LR 48:2434). 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, 2022, Notice of Intent when it is published as a final rule in the December 20, 2022, issue of the *Louisiana Register*.

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

**Cc:** Tasheka Dukes, LDH HSS Assistant Secretary  
Tara LeBlanc, Medicaid Director, LDH  
Dr. Shannon Bibbins, Medicaid Deputy Director, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

proposed Rule establishes requirements for the inactivation of a PDHC facility's license due to non-declared emergencies.

#### **Title 48**

#### **PUBLIC HEALTH-GENERAL**

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

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

#### **Chapter 52. Pediatric Day Health Care Facilities**

#### **Subchapter B. Licensing Procedures**

#### **§5205. General Provisions**

A. - G. ...

H. The PDHC facility shall provide for the installation and operation of cameras that record both video and audio at its licensed premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2761 (December 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

#### **§5213. Changes in Licensee Information or Personnel**

A. - D.3....

E. Any request for a duplicate license must be accompanied by the appropriate fees.

F. - F.2. ...

G. A change of ownership of the PDHC facility shall not be submitted at the time of annual renewal of the PDHC facility's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2763 (December 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

#### **Subchapter C. Administration and Organization**

#### **§5233. Policy and Procedures**

A. - E.5. ...

F. The director of the PDHC facility shall develop and share with all facility employees and the parents or guardians of children served at the facility a policy relative to cameras that record both video and audio at the facility that, at minimum, provides for all of the following:

1. the location and placement of cameras that record both video and audio in any room in which children may be cared for, except the interior of a restroom or any other area in which a child's bare body is normally exposed;

2. a requirement that written notice of the cameras that record both video and audio be provided to facility employees, the parents or guardians of children served at the facility, and authorized visitors;

3. a requirement that all employees who provide services at the facility receive training concerning the use of cameras that record both video and audio;

4. provisions relative to the duration of retention of video and audio data recorded by the devices required in §5205 and procedures for data storage and disposal;

5. procedures for protecting children's privacy and for determining to whom, and under what circumstances, video or audio data may be disclosed. Such policies shall restrict authorization to review video or audio data recorded by cameras at PDHC facilities to the following persons, exclusively:

a. the director of the PDHC facility;

#### **NOTICE OF INTENT**

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

#### **Pediatric Day Health Care Licensing Standards (LAC 48:I.Chapter 52)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 52 as authorized by R.S. 36:254 and R.S. 40:2131-2141. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 619 of the 2022 Regular Session of the Louisiana Legislature requires pediatric day health care (PDHC) facilities licensed by the Department of Health to install and operate cameras at the licensed premises that record both audio and video and to develop and disseminate policies regarding the recordings. In compliance with Act 619, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of PDHC facilities in order to add requirements for the installation and operation of cameras at the licensed premises that record both audio and video. In addition, this

b. the secretary of the department or his/her designee;

c. the parents or guardians of a recorded child, pursuant to an allegation or evidence of abuse, neglect or injury;

d. any member of law enforcement while investigating, in his official capacity, an allegation or evidence of abuse, neglect or injury; and

e. any party designated in a subpoena issued by a court of law;

6. a requirement that any person who views a recording showing what he believes could be a violation of state or federal law shall report the suspected violation to the appropriate law enforcement agency;

7. a requirement that any cameras that record both video and audio installed pursuant to §5205 be in compliance with the National Fire Protection Association *Life Safety Code*, as adopted by the Office of State Fire Marshal; and

8. a requirement that any video and audio recordings made by cameras at PDHC facilities, installed and operated in accordance with §5205, shall be kept confidential and are not public records; however, such a recording may be viewed by a party designated in Subsection F.5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2768 (December 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

#### **Subchapter F. Facility Responsibilities**

##### **§5265. Staffing Requirements**

A. - F.1.g. ...

2. Each direct care staff person employed by the facility shall have at least the following qualifications and experience:

a. - b. ...

c. be currently registered with the Certified Nurse Aide (CNA) Registry or Direct Service Worker (DSW) Registry as a CNA or DSW in good standing and without restrictions;

d. - e. ...

#### **G. Nursing and Direct Care Staffing Levels**

1. PDHC facilities shall have sufficient nursing and direct care staff to meet the needs of each infant and child receiving services in the PDHC facility in accordance with the plan of care.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2773 (December 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

#### **Subchapter G. Safety and Emergency Preparedness**

##### **§5281. Emergency Preparedness**

A. - J.5. ...

K. Inactivation of License due to Declared Disaster or Emergency

1. - 1.a.v. ...

b. the licensed PDHC facility resumes operating as a PDHC facility in the same service area within one year of

the issuance of such an executive order or proclamation of emergency or disaster;

EXCEPTION: If the PDHC facility requires an extension of this timeframe due to circumstances beyond the PDHC facility's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show the PDHC facility's active efforts to complete construction or repairs and the reasons for request for extension of the PDHC facility's inactive license. Any approval for extension is at the sole discretion of the department.

1.c. - 2. ...

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a PDHC facility which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the PDHC facility shall submit a written license reinstatement request to the licensing agency of the department as soon as possible prior to the anticipated date of reopening;

b. ...

c. the license reinstatement request shall include a completed licensing application with approval from the Office of Public Health and the Office of State Fire Marshal; and

3.d. - 7. ...

L. Inactivation of Licensure due to a Non-Declared Disaster or Emergency

1. A PDHC facility in an area or areas which have been affected by a non-declared emergency or disaster may seek to inactivate its license, provided that the following conditions are met:

a. the PDHC facility shall submit written notification to the Health Standards Section (HSS) within 30 days of the date of the non-declared emergency or disaster stating that:

i. the PDHC facility has experienced an interruption in the provision of services as a result of events that are due to a non-declared emergency or disaster;

ii. the facility intends to resume operation as a PDHC facility in the same service area;

iii. the PDHC facility attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

iv. the PDHC facility's initial request to inactivate does not exceed one year for the completion of repairs, renovations, rebuilding or replacement of the facility.

NOTE: Pursuant to these provisions, an extension of the 30 day deadline for initiation of request may be granted at the discretion of the department.

b. the PDHC facility continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

c. the PDHC facility continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to temporarily inactivate a PDHC facility's license, the department shall issue a notice of inactivation of license to the PDHC facility.

3. Upon receipt of the department's approval of request to inactivate the PDHC facility's license, the PDHC

facility shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the facility, if applicable, to the OSFM and OPH as required.

4. The facility shall resume operating as a PDHC facility in the same service area within one year of the approval of renovation/construction plans by the OSFM and the OPH as required.

EXCEPTION: If the PDHC facility requires an extension of this timeframe due to circumstances beyond the PDHC facility's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show the PDHC facility's active efforts to complete construction or repairs and the reasons for request for extension of the PDHC facility's inactive license. Any approval for extension is at the sole discretion of the department.

5. Upon completion of repairs, renovations, rebuilding or replacement of the PDHC facility which has received a notice of inactivation of its license from the department, the facility shall be allowed to reinstate its license upon the following conditions being met:

a. the PDHC facility shall submit a written license reinstatement request to the licensing agency of the department;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing or physical environment survey, where applicable; and

c. the license reinstatement request shall include a completed licensing application.

6. Upon receiving a completed written request to reinstate a PDHC facility's license, the department may conduct a licensing or physical environment survey. The department may issue a notice of reinstatement if the PDHC facility has met the requirements for licensure including the requirements of this Subsection.

7. No change of ownership (CHOW) of the PDHC facility shall occur until such PDHC facility has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a PDHC facility.

8. The provisions of this Subsection shall not apply to a PDHC facility which has voluntarily surrendered its license and ceased operation.

9. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the PDHC facility's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193–40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2777 (December 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

#### **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 by facilitating transparency and ability to monitor delivery of 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 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 the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule may have an adverse impact on small businesses, as described in the Act if the requirements of these licensing changes increases the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may increase direct or indirect cost to the provider to provide the same level of service due to the costs of installation and maintenance of the cameras. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the costs adversely impacts the provider's financial standing.

#### **Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. 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 27, 2022 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 10, 2022. 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

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pediatric Day Health Care  
Licensing Standards**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 22-23. It is anticipated that \$1,404 will be expended in FY 21-22 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections since the licensing fees, in the same amounts, will continue to be collected.

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

In compliance with Act 619 of the 2022 Regular Session of the Louisiana Legislature, the proposed rule amends the provisions governing the licensing of pediatric day health care (PDHC) facilities in order to add requirements for the installation and operation of cameras at the licensed premises that record both audio and video. In addition, this proposed rule establishes requirements for the inactivation of a PDHC facility's license due to non-declared emergencies. The proposed rule will be beneficial to children served and their families by providing transparency and the ability to monitor the delivery of services. It is anticipated that implementation of this proposed rule will result in indeterminable costs to PDHC providers and small businesses in FY 22-23, FY 23-24, and FY 24-25, for installation and maintenance of the cameras.

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

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2209#050

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office

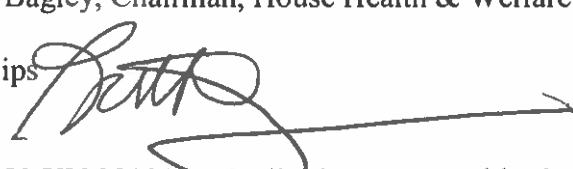


**State of Louisiana**  
Louisiana Department of Health  
Office of the Secretary

November 10, 2022

**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 LAC 50:XV.28101 – Pediatric Day Health Care Program –  
Reimbursement Rate Increase

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Pediatric Day Health Care Program – Reimbursement Rate Increase, LAC 50:XV.28101.

A Notice of Intent on the proposed amendments was published in the September 20, 2022 issue of the *Louisiana Register* (LR 48:2437). 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, 2022, Notice of Intent when it is published as a final rule in the December 20, 2022, issue of the *Louisiana Register*.

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

**Cc:** Tara LeBlanc, Medicaid Director, LDH  
Dr. Shannon Bibbins, Medicaid Deputy Director, LDH  
Kolynda Parker, Medicaid Deputy Director, LDH  
Cindy Caroon, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement in the PDHC Program in order to increase daily, hourly, and transportation rates for PDHC centers (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the August 8, 2022 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

#### **Subpart 19. Pediatric Day Health Care Program**

#### **Chapter 281. Reimbursement Methodology**

#### **§28101. General Provisions**

A. - B. ...

C. Repealed.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing. LR 36:1558 (July 2010), amended LR 39:1286 (May 2013), amended by the Department of Health, Bureau of Health Services Financing. LR 43:83 (January 2017), LR 48:

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 or autonomy as described in R.S. 49:972 by ensuring continued provider participation in the Medicaid Program.

#### **Poverty Impact Statement**

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

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses.

#### **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 services they already render.

## **NOTICE OF INTENT**

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

#### **Pediatric Day Health Care Program Reimbursement Rate Increase (LAC 50:XV.28101)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.28101 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.

Act 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health to increase reimbursement rates for pediatric day health care (PDHC) centers. In compliance with Act 199, the

### Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

### Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. 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 27, 2022 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 10, 2022. 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

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Pediatric Day Health Care Program Reimbursement Rate Increase

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$1,579,798 for FY 22-23, \$1,493,787 for FY 23-24, and \$1,538,601 for FY 24-25. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase statutory dedicated revenue collections by approximately \$129,250 for FY 22-23, \$266,255 for FY 23-24, and \$274,243 for FY 24-25. In addition, it is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$3,544,424 for FY 22-23, \$3,650,478 for FY 23-24, and \$3,759,992 for FY 22-24. It is anticipated that \$270 will be collected in FY 22-23 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the August 8, 2022 Emergency Rule, which

increased daily, hourly, and transportation reimbursement rates for pediatric day health care (PDHC) centers. These increased payments will ensure that PDHC providers continue rendering services to beneficiaries in the Medicaid Program. Implementation of this proposed rule is anticipated to increase expenditures for PDHC services by approximately \$5,252,932 for FY 22-23, \$5,410,520 for FY 23-24, and \$5,572,836 for FY 24-25.

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

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2209#051

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office





## State of Louisiana

Louisiana Department of Health  
Office of the Secretary

November 10, 2022

**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 LAC 50:XXIX.111 and 119 - Pharmacy Benefits Management Program – Copayment and Maximum Quantity

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Pharmacy Benefits Management Program – Copayment and Maximum Quantity, LAC 50: XXIX.111 and 119.

A Notice of Intent on the proposed amendments was published in the September 20, 2022 issue of the *Louisiana Register* (LR 48:2440). 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, 2022, Notice of Intent when it is published as a final rule in the December 20, 2022, issue of the *Louisiana Register*.

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

**Cc:** Tara LeBlanc, Medicaid Director, LDH  
Dr. Shannon Bibbins, Medicaid Deputy Director, LDH  
Kolynda Parker, Medicaid Deputy Director, LDH  
Melwyn Wendt, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

**NOTICE OF INTENT**

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

**Pharmacy Benefits Management Program  
Copayment and Maximum Quantity  
(LAC 50:XXIX.111 and 119)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.111 and §119 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.

Act 708 of the 2022 Regular Session of the Louisiana Legislature directed that the Department of Health require all Medicaid health plans to include the dispensing of a six-month supply of contraceptive drugs to be obtained at one time by the member, unless the member or the prescribing provider requests a smaller supply. In compliance with Act 708, the Department of Health, Bureau of Health Service Financing proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, this proposed Rule allows a 90-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXIX. Pharmacy**

#### **Chapter I General Provisions**

#### **§111. Copayment**

A. - A.1. ...

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2. The pharmacy provider shall collect a copayment from the Medicaid beneficiary for each drug dispensed and covered by Medicaid. The following pharmacy services are exempt from the copayment requirements:

a. - b. ...

c. family planning services;

d. preventive medications as designated by the U.S. Preventive Services Task Force's A and B recommendations; and

e. services provided during a federal public health emergency (PHE).

A.3. - B.5. ...

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. LR 32:1055 (June 2006), amended by the Department of Health, Bureau of Health Services Financing. LR 43:1181 (June 2017). LR 43:1553 (August 2017). LR 46:34 (January 2020). LR 48:

#### **§119. Maximum Quantity**

A. ...

B. When maintenance drugs are prescribed and dispensed for chronic illnesses they shall be in quantities sufficient to effect economy in dispensing and yet be medically sound. Maintenance type drugs should be prescribed and dispensed in at least a month's supply after the initial fill. A 90-day supply is allowed on maintenance drugs after a beneficiary has been on the same drug and strength for 60 days. Contraceptives should be dispensed in a six-month supply, after a beneficiary has been on the same drug and strength for six months, unless the beneficiary or prescriber requests a smaller supply.

C. For patients in nursing homes, the pharmacist shall bill for a minimum of a month's supply of medication unless the treating physician specifies a smaller quantity for a special medical reason. A 90-day supply is allowed on maintenance drugs after a beneficiary has been on the same drug and strength for 60 days.

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 32:1056 (June 2006), amended by the Department of Health, Bureau of Health Services Financing. LR 43:1182 (June 2017). LR 46:34 (January 2020). LR 48:

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 by ensuring that beneficiaries have access to sufficient quantities of prescription medications.

#### **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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by removing the copayment requirement for pharmacy services during a federal public health emergency.

#### **Small Business Statement**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule may have an adverse impact on small businesses, as described in the Act, if these legislatively required changes increase the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

#### **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 staffing level requirements or qualifications required to provide the same level of service, but may increase direct or indirect costs to the provider and may have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if additional inventory cost, inventory tax, and decreased reimbursement as a result of reduced dispensing fees adversely impacts the provider's financial standing.

#### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

### Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. 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 27, 2022 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 10, 2022. 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

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Pharmacy Benefits Management Program—Copayment and Maximum Quantity

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

It is anticipated that implementation of this proposed rule will result in estimated SGF programmatic savings of approximately \$49,326 for FY 22-23, \$105,827 for FY 23-24, and \$105,827 for FY 24-25. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed and final rule.

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

It is anticipated that implementation of this proposed rule will reduce federal revenue collections by approximately \$110,358 for FY 22-23, \$215,053 for FY 23-24, and \$215,053 for FY 24-25. It is anticipated that \$378 will be collected for the federal share of the expense for promulgation of the proposed and final rule.

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

In compliance with Act 708 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, it allows a 90-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements. This proposed rule will ensure that beneficiaries have sufficient quantities of prescription medications and eliminate copayments during a federal PHE. Providers of pharmacy services may be adversely impacted if the proposed rule results in additional inventory cost, inventory tax, and decreased reimbursement due to decreased dispensing fees. Implementation of this proposed rule is anticipated to

reduce expenditures in the Medicaid Program by approximately \$160,440 for FY 22-23, \$320,880 for FY 23-24, and \$320,880 for FY 24-25.

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

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2209#053

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office



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

November 10, 2022

**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 LAC 50:XV.10701 – Targeted Case Management – Reimbursement  
Methodology – EarlySteps Reimbursement Rate Increase

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Targeted Case Management – Reimbursement Methodology – EarlySteps Reimbursement Rate Increase, LAC 50:XV.10701.

A Notice of Intent on the proposed amendments was published in the September 20, 2022 issue of the *Louisiana Register* (LR 48:2442). 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, 2022, Notice of Intent when it is published as a final rule in the December 20, 2022, issue of the *Louisiana Register*.

Please contact Tracy Barker, [Tracy.Barker2@la.gov](mailto:Tracy.Barker2@la.gov), if you have any questions or require additional information about this matter.

**Cc:** Tara LeBlanc, Medicaid Director, LDH  
Dr. Shannon Bibbins, Medicaid Deputy Director, LDH  
Brian Bennett, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Program Manager, LDH  
Bethany Blackson, Legislative Liaison, LDH  
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

## NOTICE OF INTENT

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

**Targeted Case Management  
Reimbursement Methodology  
EarlySteps Reimbursement Rate Increase  
(LAC 50:XV.10701)**

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XV.10701 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.

Act 199 of the 2022 Regular Session of the Louisiana Legislature appropriated funds to the Department of Health to increase reimbursement rates paid for targeted case management services rendered in the EarlySteps Program. In compliance with Act 199, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing targeted case management services in order to increase reimbursement and utilize a flat rate reimbursement methodology for services in the EarlySteps Program (*Louisiana Register*, Volume 48, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the July 31, 2022 Emergency Rule.

### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

#### **Subpart 7. Targeted Case Management**

#### **Chapter 107. Reimbursement**

#### **§10701. Reimbursement**

A. Reimbursement for case management services for the Infant and Toddler Program (EarlySteps):

1. Effective for dates of service on or after July 1, 2022, case management services provided to participants in the EarlySteps Program shall be reimbursed at a flat rate for each approved unit of service.

a. The standard unit of service is equivalent to one month and covers both service provision and administrative (overhead) costs.

b. Service provision includes the core elements in:

i. §10301 of this Subpart;

- ii. the case management manual; and
- iii. EarlySteps practices.

#### A.2. - E. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), LR 35:73 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), LR 36:1783 (August 2010), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:97 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3302 (December 2013), LR 40:1700, 1701 (September 2014), LR 41:1490 (August 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:63 (January 2018), LR 47:1128 (August 2021), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:

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 or autonomy as described in R.S. 49:972 by ensuring continued provider participation in the Medicaid Program.

#### **Poverty Impact Statement**

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

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses.

#### **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 services they already render.

#### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this

proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. 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 27, 2022 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 10, 2022. 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

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Targeted Case Management Reimbursement Methodology EarlySteps Reimbursement Rate Increase**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$1,211,101 for FY 22-23, \$1,254,365 for FY 23-24, and \$1,299,522 for FY 24-25. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,218,492 for FY 22-23, \$1,262,022 for FY 23-24, and \$1,307,455 for FY 24-25. It is anticipated that \$324 will be collected in FY 22-23 for the federal share of the expense for promulgation of this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In compliance with Act 199 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the July 31, 2022 Emergency Rule, which amended the targeted case management (TCM) provisions in order to increase reimbursement and utilize a flat rate reimbursement methodology for services in the EarlySteps Program. The increased reimbursement resulting from this proposed rule will ensure that TCM providers continue rendering services to EarlySteps beneficiaries in the Medicaid Program. Implementation of this proposed rule is anticipated to increase payments for EarlySteps TCM services by

approximately \$2,428,945 for FY 22-23, \$2,516,387 for FY 23-24, and \$2,606,977 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2209#054

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office