



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

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

From: Stephen R. Russo, JD
Secretary

Re: Second Report to Proposed Amendments to LAC 50:XXXIII.8103 – Home and Community-Based Behavioral Health Services Waiver – Coordinated System of Care Discharge Criteria

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Amendments to Home and Community-Based Behavioral Health Services Waiver – Coordinated System of Care Discharge Criteria, LAC 50:XXXIII.8103.

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1786). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Missy Graves, Missy.Graves@la.gov, if you have any questions or require additional information about this matter.

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

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing and Office of Behavioral Health

Home and Community-Based Behavioral Health Services Waiver Coordinated System of Care Discharge Criteria (LAC 50:XXXIII.8103)

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.8103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions governing the home and community-based behavioral health services waiver in order to clarify the criteria for discharge from the Coordinated System of Care program and ensure that members are aware that their failure to cooperate in the re-evaluation assessment will result in discharge from the waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 9. Home and Community-Based Services Waiver

Chapter 81. General Provision

§8103. Recipient Qualifications

A. - B. ...

C. Recipients shall be discharged from the waiver program if one or more of the following criteria is met:

1. - 4. ...

5. the recipient or his/her parent or guardian disengaged from services, evidenced by lack of face-to-face contact for a minimum of 60 consecutive calendar days or by failure to cooperate in the re-evaluation assessment at least every 180 days;

6. - 7. ...

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 38:366 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 43:324 (February 2017), LR 44:1895 (October 2018), LR 46:183 (February 2020), LR 50:

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 properly notify families of the requirement to participate in the level of care assessment to determine eligibility and allow for continuity of needed 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 Analysis

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

Provider Impact Statement

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

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on November 28, 2023 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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Behavioral Health Services Waiver

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

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

This proposed rule amends the provisions governing the home and community-based behavioral health services waiver in order to clarify the criteria for discharge from the Coordinated System of Care (CSoC) program and ensure that members are aware that their failure to cooperate in the re-evaluation assessment will result in discharge from the waiver program.

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

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

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

This proposed rule amends the provisions governing the home and community-based behavioral health services waiver in order to clarify the criteria for discharge from the Coordinated System of Care (CSoC) program and ensure that members are aware that their failure to cooperate in the re-evaluation assessment will result in discharge from the waiver program. It will have a positive impact on beneficiaries as it will allow proper notification of the requirement to participate in the level of care assessment to determine eligibility and allow for continuity of needed services. Implementation of this proposed rule will not result in costs to behavioral health providers and small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the criteria for discharge from the CSOC program are clearly and accurately promulgated in the Louisiana Administrative Code.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
2310#045

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee
The Honorable Chairman Mack "Bodi" White, Senate Finance Committee
The Honorable Chairman Jerome Zeringue, House Appropriations Committee

From: Stephen R. Russo, JD
Secretary

Re: Second Report to Proposed Amendments to LAC 50:XXI.Chapters 53-61 – Home and Community-Based Services Waivers – Supports Waiver

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Amendments to Home and Community-Based Services Waivers – Supports Waiver, LAC 50:XXI.Chapters 53-61.

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1788). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Justin Owens, Justin.Owens@la.gov, if you have any questions or require additional information about this matter.

Cc: Julie Foster Hagan, OCDD Assistant Secretary, LDH
Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, 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

Home and Community-Based Services Waivers Supports Waiver (LAC 50:XXI.Chapters 53-61)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.Chapters 53-61 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, Office for Citizens with Developmental Disabilities submitted an application for an amendment to the Supports Waiver to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) in order to add and update services provided under the waiver.

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend the provisions governing the Supports Waiver to: 1) add specialized medical equipment and supplies (incontinence supplies) and community life engagement development as services, and transportation as a separate service; 2) add reimbursement for each new service; and 3) allow prevocational services to be delivered virtually in order to align the administrative Rule with the CMS-approved waiver application.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 5. Supports Waiver

Chapter 53. General Provisions

§5301. Purpose

A. The mission of this waiver is to create options and provide meaningful opportunities that enhance the lives of individuals with intellectual and/or developmental disabilities through employment and day service supports in the community. The goals of the supports waiver are as follows:

1. - 3. ...

B. Allocation of Waiver Opportunities. The Office for Citizens with Developmental Disabilities (OCDD) maintains the developmental disabilities request for services registry (DDRSR), hereafter referred to as "the registry," which identifies persons with intellectual and/or developmental disabilities who are found eligible for developmental disabilities services using standardized tools, and who request waiver services.

1. - 3. ...

4. OCDD waiver opportunities shall be offered based on the following priority groups:

a. Individuals living at publicly operated intermediate care facilities for the developmentally disabled

(ICF/IIDs) or who lived at a publically operated ICF/IID when it was transitioned to a private ICF/IID through a cooperative endeavor agreement (CEA facility), or their alternates. Alternates are defined as individuals living in a private ICF/IID who will give up the private ICF/IID bed to an individual living at a publicly operated ICF/IID or to an individual who was living in a publicly operated ICF/IID when it was transitioned to a private ICF/IID through a cooperative endeavor agreement. Individuals requesting to transition from a publicly operated ICF/IID are awarded a slot when one is requested, and their health and safety can be assured in an OCDD waiver. This also applies to individuals who were residing in a publicly operated facility at the time the facility was privatized and became a CEA facility.

b. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006), amended LR 40:2583 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2531 (December 2017), LR 48:1574 (June 2022), LR 50:

Chapter 55. Target Population

§5503. Denial of Admission or Discharge Criteria

A. Beneficiaries shall be denied admission to, or discharged from, the supports waiver if one of the following criteria is met:

1. ...

2. the beneficiary does not meet the requirement for an ICF/IID level of care;

3. - 4. ...

5. the beneficiary is admitted to an ICF/IID or nursing facility with the intent to stay and not to return to waiver services:

a. ...

b. the beneficiary will be discharged from the waiver on the ninety-first day if the participant is still in the ICF/IID or nursing facility;

6. - 8. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2584 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1575 (June 2022), LR 50:

Chapter 57. Covered Services

§5701. Supported Employment Services

A. Supported employment services consists of intensive, ongoing supports and services necessary for a beneficiary to achieve the desired outcome of employment in a community setting where a majority of the persons employed are without disabilities. Beneficiaries utilizing these services may need ongoing supports for the life of their employment due to the nature of their disability, and natural supports may not meet this need.

B. Supported employment services provide supports in the following areas:

1. ...

2. job assessment, discovery and development, placement; and

B.3. - C. ...

D. Transportation is a separate billable component for supported employment services, both individual and group. Transportation may be billed on the same day as a supported employment service is delivered.

E. ...

F. Supported employment services may be furnished by a coworker or other job-site personnel under the following circumstances:

1. ...

2. these coworkers meet the pertinent qualifications for the providers of the service.

G. Service Limitations

1. Services for job assessment, discovery and development in individual jobs and self-employment shall not exceed the number of units as defined in a plan of care year and must have a prior authorization.

2. Services for job assessment, discovery and development in group employment shall not exceed the number of units as defined in a plan of care year and must have a prior authorization.

3. Services for individual initial job support, job retention and follow-along shall not exceed the number of units of service as defined in a plan of care year and must have prior authorization. Individual job follow-along services may be delivered virtually.

4. Services for initial job support, job retention and follow-along in group employment shall not exceed the number of units of service as defined in a plan of care year and must have prior authorization.

H. Restrictions

1. Beneficiaries receiving individual and/or group supported employment services may also receive other services in the same service day. However, these services cannot be provided at the same time of the day.

2. All virtual individual supported employment services must be documented and included in the plan of care. Virtual delivery of group supported employment is not allowed.

I. - J. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), LR 48: LR 48:1575 (June 2022), LR 50:

§5703. Day Habilitation

A. ...

B. Day habilitation is the overarching service and may be delivered in a combination of these two service types:

1. onsite day habilitation; and

2. community life engagement.

NOTE: Day habilitation services may be delivered virtually and be included in the approved plan of care.

3. Repealed.

C. - D. ...

E. Transportation is a separate billable component for day habilitation services. A day habilitation service must be billed on the same day that transportation is billed. Transportation cannot be billed if the service is delivered virtually.

F. Service Limitations. Services shall not exceed the number of units of service as defined in a plan of care year and must have a prior authorization.

G. Restrictions

1. Beneficiaries receiving day habilitation services may also receive other services on the same day but not at the same time of the day.

2. All virtual delivery of day habilitation services must be on an approved plan of care.

H. 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, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1576 (June 2022), LR 50:

§5705. Prevocational Services

A. Prevocational services are individualized, person centered services that assist the beneficiaries in establishing their path to obtain individualized community employment. This service is time limited and targeted for people who have an interest in becoming employed in individual jobs in the community, but who may need additional skills, information, and experiences to determine their employment goal and become successfully employed. Beneficiaries receiving prevocational services may choose to leave this service at any time or pursue employment opportunities at any time. Career planning must be a major component of prevocational services and should include activities focused on beneficiaries becoming employed to their highest ability.

B. Prevocational services is the overarching service and may be delivered in a combination of these two service types:

1. onsite prevocational; and

2. community career planning.

NOTE: Prevocational services may be delivered virtually

3. Repealed.

C. - D. ...

E. Prevocational services may also include assistance in personal care with activities of daily living.

F. Transportation is a separate billable component for prevocational services. A prevocational service must be billed on the same day that transportation is billed. Transportation cannot be billed if the prevocational service is delivered virtually.

G. Service Limitations. Services shall not exceed the number of units of service as defined in a plan of care year and must have a prior authorization.

H. Restrictions

1. Beneficiaries receiving prevocational services may also receive other services on the same day but cannot be provided during the same time of the day.

2. All virtual prevocational services must be included on the approved plan of care.

1. Prevocational services are not available to individuals who are eligible to participate in programs that are available and funded under section 110 of the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [20 U.S.C. 1401 (26 and 29)], as amended, and those covered under the state plan, if applicable.

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, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2585 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1577 (June 2022), LR 50:

§5707. Respite

A. Respite care is a service provided on a short-term basis to a beneficiary who is unable to care for himself/herself due to the absence or need for relief of those unpaid persons normally providing care for the beneficiary.

B. Respite may be provided in a licensed respite care facility that is determined to be appropriate by the beneficiary or other responsible party, or may be provided in the beneficiary's home or private place of residence.

C. - D. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2586 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1577 (June 2022), LR 50:

§5709. Habilitation

A. Habilitation offers services designed to assist the beneficiary in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community settings.

B. Habilitation is provided in the home or community, includes necessary transportation, and is included on the plan of care as determined to be appropriate.

C. Habilitation services may include, but are not limited to:

1. ...

2. travel training activities in the community that promote community independence, to include but not limited to, place of individual employment, church, or other community activity. This does not include group supported employment, day habilitation, or prevocational sites.

D. - E. ...

F. Beneficiaries receiving habilitation may use this service in conjunction with other supports waiver services as long as other services are not provided during the same period in a day.

NOTE: Beneficiaries who are age 18 through 21 may also receive available services as outlined on their plan of care through the Early Periodic Screening, Diagnosis and

Treatment (EPSDT) Program, if applicable. Beneficiaries who are age 21 and older may receive available services as outlined on their plan of care through the Long-Term Personal Care Services (LT-PCS) Program, if applicable.

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, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2586 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1577 (June 2022), LR 50:

§5713. Personal Emergency Response System

A. A personal emergency response system (PERS) is an electronic device connected to the beneficiary's phone which enables a beneficiary to secure help in the community. The system is programmed to signal a response center staffed by trained professionals when a "help" button is activated.

B. ...

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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022), LR 50:

§5715. Support Coordination

A. Support coordination is a service that will assist beneficiaries in gaining access to all of their necessary services, as well as medical, social, educational, and other services, regardless of the funding source for the services. Support coordinators shall be responsible for on-going monitoring of the provision of services included in the beneficiary's approved plan of care.

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, Office for Citizens with Developmental Disabilities, LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022), LR 50:

§5717. Housing Stabilization Transition Services

A. Housing stabilization transition services enable beneficiaries who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the beneficiary is in an institution and preparing to exit the institution using the waiver. The service includes the following components:

1. conducting a housing assessment to identify the beneficiary's preferences related to housing (i.e., type, location, living alone or with someone else, need for accommodations, and other important preferences), and his/her needs for support to maintain housing, including:

A.1.a. - C.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:81 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1578 (June 2022), LR 50:

§5721. Dental Services

A. - A.10. ...

B. Dental Service Exclusions

1. ...

2. Non-covered services include but are not limited to the following:

a. - e. ...

f. routine post-operative services — these services are covered as part of the fee for initial treatment provided;

B.2.g. - C. ...

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 48:1579 (June 2022), LR 50:

§5723. Community Life Engagement Development

A. Community life engagement development (CLED) facilitates the development of opportunities to assist beneficiaries in becoming involved in the community. The purpose of CLED is to find the opportunities that encourage and foster the development of meaningful relationships in the community reflecting the beneficiary's choices and values. Objectives outlined in the comprehensive plan of care will afford opportunities to increase community inclusion, participation in leisure/recreational activities, and encourage participation in volunteer and civic activities. To utilize this service, the beneficiary may or may not be present. CLED services may be performed by a staff person for up to three waiver beneficiaries who have a common provider agency for day services and supports. Rates shall be adjusted accordingly.

B. Transportation costs are included in the reimbursement for CLED services.

C. Service Limitations. Services shall not exceed the number of units as defined in the beneficiary's plan of care and must have a prior authorization.

D. Provider Qualifications. Providers must be licensed by the Department of Health as a home 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 50:

§5725. Specialized Medical Equipment and Supplies

A. Incontinence briefs and supplies are available for a beneficiary, 21 years or older, who has a physician's order and requires the use of incontinence briefs and supplies.

B. Service Restrictions

1. This service is for those who are 21 years of age or older.

2. This service requires a physician's order.

C. Service Limitations

1. The cost cannot exceed \$2,500 in a single plan of care year.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 50:

Chapter 59. Provider Participation

§5901. General Provisions

A. ...

B. If the transportation component for supported employment, day habilitation, and/or prevocational services is provided by the provider, the provider must have insurance coverage that meets current home and community-based services providers licensing standards on any vehicles used in transporting a beneficiary.

C. In addition to meeting the requirements cited in this §5901.A and B, providers must meet the following requirements for the provision of designated services.

1. - 7. ...

8. Specialized Medical Equipment and Supplies. Providers of this service must be enrolled to participate in the Medicaid Program as a provider of assistive technology, specialized medical equipment, and supplies.

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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, Office for Citizens with Developmental Disabilities, LR 40:2587 (December 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2532 (December 2017), LR 48:1579 (June 2022), LR 50:

§5903. Electronic Visit Verification

A. ...

B. Reimbursement shall only be made to providers with use of the EVV system. The services that require use of the EVV system include the following: in home respite, center-based respite, habilitation, day habilitation, prevocational services, and supported employment services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:1288 (July 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:1579 (June 2022), LR 50:

Chapter 61. Reimbursement

§6101. Unit of Reimbursement

A. The reimbursement for all services will be paid on a per claim basis. The reimbursement rate covers both service provision and administration. Services which utilize a prospective flat rate of one-quarter hour (15 minutes) will not be paid for the provision of less than one-quarter hour of service.

B. Supported Employment Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. A standard unit of service in both individual and group supported employment services is one-quarter hour (15 minutes). A standard unit for individual ongoing follow along and job assessment is a fee for service rate.

C. - J. ...

K. Community Life Engagement Development. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. One-quarter hour (15 minutes) is the standard unit of service.

L. Transportation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary. A standard unit is a daily rate.

M. Specialized Medical Equipment and Supplies. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the beneficiary.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:2281 (October 2010), LR 37:2158 (July 2011), LR 39:1050 (April 2013), LR 40:82 (January 2014), LR 40:2587 (December 2014), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:43 (January 2022), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 48:43 (January 2022), LR 48:1579 (June 2022), LR 49:1072 (June 2023), LR 50:

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 may help ease the financial burden on the family budget by providing coverage for transportation and incontinence supplies.

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, as it may help ease the financial burden on the family budget by providing coverage for transportation and incontinence supplies.

Small Business Analysis

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

provides reimbursement for new services added to the Supports Waiver.

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 or 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 it provides reimbursement for new services added to the Supports Waiver.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan, JD is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on November 28, 2023 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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Supports Waiver

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 \$1,508,215 for FY 23-24, \$1,615,212 for FY 24-25, and \$1,696,270 for FY 25-26. It is anticipated that \$2,700 (\$1,350 SGF and \$1,350 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule amends the provisions governing the Supports Waiver to: 1) add specialized medical equipment and supplies (incontinence supplies) and community life engagement development as services, and transportation as a separate service; 2) add reimbursement for each new service; and 3) allow prevocational services to be delivered virtually in order to align the administrative rule with the waiver

application approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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 \$3,288,836 for FY 23-24, \$3,419,738 for FY 24-25, and \$3,591,354 for FY 25-26. It is anticipated that \$1.350 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing the Supports Waiver to: 1) add specialized medical equipment and supplies (incontinence supplies) and community life engagement development as services, and transportation as a separate service; 2) add reimbursement for each new service; and 3) allow prevocational services to be delivered virtually in order to align the administrative rule with the waiver application approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. This proposed rule may ease the financial burden on Supports Waiver beneficiaries and their families by providing Medicaid coverage for transportation and incontinence supplies. Providers and small businesses will benefit from implementation of this proposed rule, since it is anticipated to increase Medicaid payments for Supports Waiver services by approximately \$4,797,051 for FY 23-24, \$5,034,950 for FY 24-25, and \$5,287,624 for FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
2310#046

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee
The Honorable Chairman Mack "Bodi" White, Senate Finance Committee
The Honorable Chairman Jerome Zeringue, House Appropriations Committee

From: Stephen R. Russo, JD
Secretary

Re: Second Report to Proposed Amendments to LAC 50:XIII.801 – Home Health Program – American Rescue Plan Act

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Amendments to Home Health Program – American Rescue Plan Act, LAC 50:XIII.801.

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1793). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Justin Owens, Justin.Owens@la.gov, if you have any questions or require additional information about this matter.

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

in a Medicaid waiver program (*Louisiana Register*, Volume 49, Number 5). The department now proposes to amend the provisions governing nursing recruitment and retention payments in the Home Health Program as a result of the decision by CMS to continue to provide funding under ARPA through March 2025.

Title 50

PUBLIC HEALTH-GENERAL

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 8. American Rescue Plan Act Funding

§801. Nursing Recruitment and Retention Payments

A. General Provisions

1. Nurses that provide extended home health (EHH) services may be eligible to receive recruitment and retention bonuses through March 2025.

2. - 4. ...

5. HHAs shall disburse the entire payment to the nurse and are prohibited from reducing the payment for any purpose other than required state or federal withholdings.

A.6. - C.2. ...

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 49:875 (May 2023), amended LR 50:

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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, by reducing the waiting time needed to receive extended home health services, thereby, increasing the percentage of prior authorized nursing hours that are filled.

Poverty Impact Statement

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

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule may have a positive impact on small businesses, since the additional financial support may increase the hiring ability of home health agencies.

Provider Impact Statement

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

NOTICE OF INTENT

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

**Home Health Program
American Rescue Plan Act
(LAC 50:XIII.801)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.801 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the Department of Health's administration and payment model for funds provided under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to agencies that provide home health care services. In compliance with the CMS-approved model for administering ARPA funds, the Department of Health, Bureau of Health Services Financing adopted provisions governing ARPA funding in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health services to beneficiaries under the age of 21 who are

provider's ability to provide the same level of service as described in HCR 170, since this proposed Rule provides additional financial support which may increase the hiring ability of home health agencies.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on November 28, 2023 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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home Health Program American Rescue Plan Act

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 programmatic costs of approximately \$961,020 for FY 23-24 and \$2,883,750 for FY 24-25. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed and final rule.

This proposed rule amends the provisions in the Home Health Program governing recruitment and retention payments funded under the American Rescue Plan Act of 2021 (ARPA) for nurses that provide extended home health services to beneficiaries under the age of 21 who are in a Medicaid waiver program. These payments were due to expire in April 2024; however, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services made the decision to extend the funding for these services under ARPA through March 2025.

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 \$961,020 for FY 23-24 and \$2,883,750 for FY 24-25. It is anticipated that \$270 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions in the Home Health Program governing recruitment and retention payments funded under the American Rescue Plan Act of 2021 (ARPA) for nurses that provide extended home health services to beneficiaries under the age of 21 who are in a Medicaid waiver program. These payments were due to expire in April 2024; however, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services made the decision to extend the funding for these services under ARPA through March 2025. This proposed rule continues the administrative fee home health agencies receive to make recruitment and retention payments to nurses which may reduce the beneficiaries' waiting time to receive extended home health services and increase the percentage of prior authorized nursing hours that are filled. Implementation of this proposed rule is anticipated to increase expenditures for home health services by approximately \$1,921,500 for FY 23-24 and \$5,767,500 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule continues the administrative fee provided under ARPA to home health agencies for recruitment and retention payments to nurses that provide extended home health services to pediatric Medicaid waiver participants, which will make it easier to hire and retain nurses to provide these services.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
2310#047

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

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

From: Stephen R. Russo, JD
Secretary

Re: Second Report to Proposed Amendments to LAC 50:III.941 – Medicaid Eligibility
– Incurred Medical and Remedial Care Expenses

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Amendments to Medicaid Eligibility – Incurred Medical and Remedial Care Expenses, LAC 50:III.941.

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1794). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Joseph Henry, Joseph.Henry@la.gov, if you have any questions or require additional information about this matter.

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

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility

Subpart 1. General Administration

Chapter 9. Financial Eligibility

Subchapter D. Incurred Medical

§941. Incurred Medical and Remedial Care Expenses

A. In accordance with 42 C.F.R. Part 435 Subparts H and I, certain medical and remedial care expenses incurred by institutionalized individuals and individuals receiving home and community-based services furnished under a waiver, subject to the reasonable limits specified herein, are deducted from the individual's income in the calculation of patient liability.

B. Reasonable limits imposed are:

1. For medically necessary care, services, and items not paid under the Medicaid State Plan or, if covered under the Medicaid State Plan, denied due to service limitations.

a. The medical or remedial care must be:

- i. recognized under state law;
- ii. medically necessary as verified by an independent licensed physician or medical director; and
- iii. incurred no earlier than three months preceding the month in which it is reported to the state; and

b. The medical or remedial care cannot be:

- i. for cosmetic or elective purposes, except when medically necessary as verified by an independent licensed physician or medical director; and/or
- ii. for payment of a medical or dental service plan that has not been approved by the Department of Insurance in accordance with the Louisiana Insurance Code, Title 22 of the *Louisiana Revised Statutes*.

2. The deduction for medical and remedial care expenses that were incurred as a result of imposition of transfer of assets penalty period is limited to \$0.

3. The deduction for medical and remedial care expenses that were incurred as a result of the individual's equity interest in the home exceeding the limit established under 42 U.S.C. §139p(f) is limited to \$0.

4. The deduction for medical or remedial care expenses that were incurred during a period when the individual is not subject to patient liability is limited to \$0.

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 50:

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 may have a negative impact on family functioning, stability and autonomy as described in R.S. 49:972 as it may result in some incurred medical and

remedial care expenses not being submitted by providers in a timely enough manner to be deducted from the patient's liability calculation.

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 may have a negative impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it may result in some incurred medical and remedial care expenses not being submitted by providers in a timely enough manner to be deducted from the patient's liability calculation.

Small Business Analysis

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

Provider Impact Statement

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

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. 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 November 28, 2023 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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Medicaid Eligibility
Incurred Medical and Remedial Care Expenses**

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

It is anticipated that implementation of this proposed rule may have an indeterminable savings for FY 23-24, FY 24-25, and FY 25-26. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule adopts provisions governing incurred medical and remedial care expenses for beneficiaries who are institutionalized and enrolled in Medicaid or receiving home and community-based services furnished under a waiver in order to deduct certain medical and remedial care expenses incurred for their care, subject to the reasonable limits, from the individual's income in the calculation of patient liability to an institution, in compliance with Title 42 of the Code of Federal Regulations Part 435 Subparts H and I, and to limit the amount of time institutions have to report these expenses to three months after they occurred.

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

Implementation of this proposed rule may result in an indeterminable reduction on revenue collections for FY 23-24, FY 24-25, and FY 25-26. It is anticipated that \$324 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule adopts provisions governing incurred medical and remedial care expenses for beneficiaries who are institutionalized and enrolled in Medicaid or receiving home and community-based services furnished under a waiver in order to deduct certain medical and remedial care expenses incurred for their care, subject to the reasonable limits, from the individual's income in the calculation of patient liability to an institution, in compliance with Title 42 of the Code of Federal Regulations Part 435 Subparts H and I, and to limit the amount of time institutions have to report these expenses to three months after they occurred. This proposed rule will impact beneficiaries if some medical and remedial care expenses are not reported in a timely manner and are not deducted from the patient's liability calculation. Providers will also be impacted since they will now have a three-month time limit for reporting expenses to Medicaid. Implementation of this proposed rule will have no fiscal impact to providers or small businesses, but the timely deduction of incurred medical expenses may result in an indeterminable savings to the Medicaid program for FY 23-24, FY 24-25, and FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
2310#048

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

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

From: Stephen R. Russo, JD
Secretary

Re: Second Report to Proposed Amendments to LAC 50:XXVII.Chapter 3 – Medical Transportation Program – Emergency Medical Transportation

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Amendments to Medical Transportation Program – Emergency Medical Transportation, LAC 50:XXVII.Chapter 3.

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1796). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Veronica Gonzales, Veronica.Gonzales@la.gov, and Erin Lee, Erin.Lee@la.gov, if you have any questions or require additional information about this matter.

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

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Medical Transportation Program Emergency Medical Transportation (LAC 50:XXVII.Chapter 3)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.Chapter 3 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requires reimbursement for emergency ambulance services to transition from the Full Medicaid Pricing program to an approved federal supplemental payment program by July 1, 2023. The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement in the Medical Transportation Program in order to align the reimbursement rates established for emergency ambulance services and providers with current practice for Medicaid managed care and fee-for-service (*Louisiana Register*, Volume 49, Number 5). The department subsequently promulgated a Notice of Intent to continue the provisions of the July 1, 2023 Emergency Rule (*Louisiana Register*, Volume 49, Number 6). After further discussion with various stakeholders, the department determined that it was necessary to abandon the June 20, 2023 Notice of Intent and promulgated an Emergency Rule in order to amend the provisions of the July 1, 2023 Emergency Rule (*Louisiana Register*, Volume 49, Number 10). This proposed Rule is being promulgated to continue the provisions of the July 1, 2023 and September 11, 2023 Emergency Rules.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter A. Reserved.

Subchapter B. Ground Transportation

§325. Reimbursement

A. The Medicaid reimbursement for ground ambulance services is the rate established in the state fee schedule for emergency ambulance transport, basic life support, advanced life support and mileage, oxygen, intravenous fluids, and disposable supplies administered during the emergency ambulance transport minus the amount paid by any liable third party coverage.

B. - J. ...

K. Effective for dates of service on or after July 1, 2023, the reimbursement rates for emergency ground ambulance transportation services shall be reimbursed based on the Louisiana Medicaid fee schedule.

EXCEPTION. Except as otherwise noted in the plan, state-developed fee schedule rates are established separately for governmental, New Orleans-based governmental, and private providers of ambulance transportation services to account for cost variability across these provider types and to maintain access to care through alignment with historic payment levels.

1. The agency's fee schedule rate, set as of July 1, 2023, is effective for services provided on or after that date. All rates are published on the agency's website at: <https://www.lamedicaid.com>.

2. The fee schedule was established as a function of historical rates in effect as of January 1, 2023 plus an enhancement which was calculated to achieve total fee schedule reimbursement as a percentage of average commercial rates (ACR), with the clarifications listed within Subparagraph a through c below:

a. governmental ambulance providers include those ambulance providers who are owned or operated by a public organization such as state, federal, parish, or city entities;

b. New Orleans-based governmental ambulance providers include ambulance providers located within the city of New Orleans; and

c. private ambulance transportation providers include corporations, limited liability companies, partnerships, or sole proprietors. Private providers must comply with all state laws and the regulations of any governing state agency, commission, or local entity to which they are subject as a condition of enrollment and continued participation in the Medicaid program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), LR 36:2564 (November 2010), LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 50:

§327. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical transportation services rendered during the quarter if the department has received an appropriation from the legislature for these payments.

B. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:1530 (August 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 50:

§331. Enhanced Reimbursements for Qualifying Emergency Ground Ambulance Service Providers

A. Emergency Medical Transportation

1. Qualifying emergency ambulance service providers assessed a fee as outlined in LAC 48:I.4001.E.1.a-b shall receive enhanced reimbursement for emergency ground ambulance transportation services rendered during the quarter through the Supplemental Payment Program described in the Medicaid State Plan if the department has

received an appropriation from the legislature for these payments.

2. Effective for dates of service on or after July 1, 2019, qualifying emergency ambulance service providers assessed a fee as outlined in LAC 48:I.4001.E.1.a-d shall receive enhanced reimbursement for non-emergency ground ambulance transportation services rendered during the quarter through the Supplemental Payment Program described in the Medicaid State Plan if the department has received an appropriation from the legislature for these payments.

B. - E.1. ...

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 42:1890 (November 2016), amended LR 45:1598 (November 2019), LR 50:

Subchapter C. Aircraft Transportation

§351. Standards for Participation

A. Rotor winged (helicopters) and fixed winged emergency aircraft must be certified by the Department of Health, Bureau of Health Services Financing in order to receive Medicaid reimbursement. All air ambulance services must be provided in accordance with state laws and regulations governing the administration of these services.

B. ...

C. Prior Approval. Prior approval shall not be required for emergency air ambulance transportation services, including mileage. Approval shall be done during post payment review and shall not be completed prior to service delivery. Claims for payment of emergency air ambulance transportation services are received and reviewed retrospectively. The clinical documentation for each emergency air ambulance transportation service shall not be required for submission concurrent with the claim. If required, clinical documentation shall be required post claim submission.

1. Air ambulance claims will be reviewed and a determination will be made based on the following requirements. Air ambulance services are covered only if:

a. speedy admission of the beneficiary is essential and the point of pick-up of the beneficiary is inaccessible by a land vehicle; or

b. great distance or other obstacles are involved in getting the beneficiary to the nearest hospital with appropriate services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 50:

§353. Reimbursement

A. - B. ...

C. If a ground ambulance must be used for part of the transport, the ground ambulance provider will be reimbursed separately according to the provisions governing emergency ground transportation.

D. - I.2. ...

J. The reimbursement rates for emergency and non-emergency, rotor winged and fixed winged air ambulance transportation services shall be reimbursed based on the

Louisiana Medicaid fee schedule. These rates include both in state and out-of-state air ambulance transportation. The agency's fee schedule rate was set as of January 1, 2022 and is effective for services provided on or after that date. All rates are published on the agency's website at: <https://www.lamedicaid.com>.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010), amended LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014), LR 42:277 (February 2016), amended by the Department of Health, Bureau of Health Service Financing, LR 50:

§355. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical air transportation services rendered during the quarter if the department has received an appropriation from the legislature for these payments.

B. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:1531 (August 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 50:

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

Provider Impact Statement

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

level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on November 28, 2023 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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Transportation Program Emergency Medical Transportation

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule continues Emergency Rule provisions and is necessary to comply with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirement that reimbursement for emergency ambulance services transition from the Full Medicaid Pricing program to an approved federal supplemental payment program.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$594 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

The Department of Health promulgated an Emergency Rule and published a Notice of Intent in the June 20, 2023 edition of the Louisiana Register, which amended the provisions governing reimbursement in the Medical Transportation

Program effective July 1, 2023 in order to align the reimbursement rates established for emergency ambulance services and providers with current practice for Medicaid managed care and fee-for-service. However, after further discussions with stakeholders, the Department decided not to proceed with the June 2023 Notice of Intent and to issue an amended Emergency Rule on September 11, 2023. This proposed rule continues the emergency provisions and is necessary to comply with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirement that reimbursement for these services transition from the Full Medicaid Pricing program to an approved federal supplemental payment program. Implementation of this proposed rule is not anticipated to result in costs or benefits to emergency medical transportation providers or small businesses and will not result in a fiscal impact in FY 23-24, FY 24-25, and FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This rule has no known effect on competition and employment.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
2310#049

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee
The Honorable Chairman Mack "Bodi" White, Senate Finance Committee
The Honorable Chairman Jerome Zeringue, House Appropriations Committee

From: Stephen R. Russo, JD
Secretary

Re: Second Report to Proposed Amendments to LAC 50:XXVII.531 – Medical Transportation Program – Non-Emergency Medical Transportation – American Rescue Plan Act

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Amendments to Medical Transportation Program – Non-Emergency Medical Transportation – American Rescue Plan Act, LAC 50:XXVII.531.

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1799). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Veronica Gonzales, Veronica.Gonzales@la.gov, and Erin Lee, Erin.Lee@la.gov, if you have any questions or require additional information about this matter.

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

NOTICE OF INTENT
Department of Health
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
American Rescue Plan Act
(LAC 50:XXVII.531)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.531 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of funds provided under the American Rescue Plan Act of 2021 (ARPA) for bonus payments to providers of non-emergency medical transportation (NEMT) services. The Department of Health, Bureau of Health Services Financing adopted provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of ARPA bonus payment funds to eligible NEMT providers (*Louisiana Register*, Volume 49, Number 5). The department promulgated an Emergency Rule which amended the provisions governing ARPA bonus payments in order to establish the guidelines that will be utilized to oversee the administration and distribution of ARPA bonus payment funds to eligible NEMT providers by the Medicaid managed care organizations (*Louisiana Register*, Volume 49, Number 10). This proposed Rule is being promulgated to continue the provisions of the December 1, 2023 Emergency Rule.

Title 50
PUBLIC HEALTH—GENERAL
Part XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter E. Non-Emergency Medical Transportation
American Rescue Plan Act
§531. Non-Emergency Medical Transportation Bonus
Payments

A. ...

1. Non-emergency medical transportation (NEMT) providers that are fully credentialed in the Medicaid Program may be eligible to receive a bonus payment under the Department of Health's (LDH) American Rescue Plan Act (ARPA) NEMT Program until the program's federal funds are exhausted or through the conclusion of the program.

2. Fully credentialed NEMT providers who meet all eligibility requirements are entitled to a monthly disbursement of \$500 per vehicle, for up to three vehicles per month, totaling a maximum payment of \$1,500 per month per transportation provider. The managed care organization (MCO) will determine eligibility for monthly payments based on the NEMT provider's ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program and the LDH ARPA NEMT Program.

3. ...

4. The MCO will provide a weekly report to LDH containing all newly acquired NEMT providers. LDH will assign each active NEMT provider to an affiliated MCO.

5. The MCO will administer all payments for the LDH ARPA NEMT Program.

a. - e. Repealed.

6. In order to receive payments under the LDH ARPA NEMT Program, the NEMT provider shall do the following:

a. accede to all provisions of the LDH ARPA NEMT Program and execute a contractual agreement with the MCO, solely for the distribution of ARPA funds;

b. maintain ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program;

c. submit reporting and credentialing documentation for all drivers and vehicles within their individual company used for NEMT services on a monthly basis. Failure to meet both LDH and the MCO's time requirements shall result in loss of the monthly bonus payment; and

d. submit a monthly attestation to the MCO which certifies the accuracy of the submitted supporting and credentialing documentation.

7. NEMT services are ineligible and shall not be submitted as a completed service if the status of the NEMT service rendered results in one of the following:

a. the provider is a no-show;

b. no NEMT vehicle is available;

c. no NEMT driver is available; or

d. the NEMT provider is late which causes the beneficiary to miss his or her scheduled Medicaid covered service.

B. - B.1. ...

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 49:877 (May 2023), amended by the Department of Health, Bureau of Health Services Financing, LR 50:

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

Family Impact Statement

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

Poverty Impact Statement

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

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses as it increases reimbursement to eligible non-emergency medical transportation providers.

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 Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. 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 November 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth

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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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Medical Transportation Program Non-Emergency Medical Transportation American Rescue Plan Act

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 \$892,978 for FY 23-24 and \$1,083,315 for FY 24-25. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule continues the provisions of the December 1, 2023 Emergency Rule, which amended the provisions in the Medical Transportation Program governing bonus payments to providers of non-emergency medical transportation (NEMT) services in order to establish the guidelines the department will utilize to oversee the administration and distribution of American Rescue Plan Act (ARPA) bonus payment funds to eligible NEMT providers by the Medicaid managed care organizations (MCOs).

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 \$1,908,470 for FY 23-24 and \$2,315,853 for FY 24-25. It is anticipated that \$432 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the December 1, 2023 Emergency Rule, which amended the provisions in the Medical Transportation Program governing bonus payments to providers of non-emergency medical transportation (NEMT) services in order to establish the guidelines the department will utilize to oversee the administration and distribution of American Rescue Plan Act (ARPA) bonus payment funds to eligible NEMT providers by the Medicaid managed care organizations (MCOs). This proposed rule will ensure that the ARPA bonus payments are made appropriately to eligible NEMT providers by the MCOs and that these providers continue rendering services to Medicaid beneficiaries. Implementation of this proposed rule is anticipated to increase expenditures for NEMT services by approximately \$2,800,584 for FY 23-24 and \$3,399,168 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Kimberly Sullivan, JD
Interim Medicaid Executive Director
2310#050

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

December 8, 2023

Via Statutorily Prescribed Email

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

From: Stephen R. Russo, JD
Secretary

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

A Notice of Intent on the proposed amendments was published in the October 20, 2023 issue of the *Louisiana Register* (LR 49:1801). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the October 20, 2023, Notice of Intent when it is published as a final rule in the January 20, 2024, issue of the *Louisiana Register*.

Please contact Jackie Cummings, Jackie.Cummings2@la.gov, if you have any questions or require additional information about this matter.

Cc: Kimberly Sullivan, Interim Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Rachel Newman, Medicaid Deputy Director, LDH
Tizi Robinson, 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

Nursing Facilities Optional State Assessment (LAC 50:IL.10123 and 20001)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:IL.10123 and §20001 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 46:2742 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.

Due to the Coronavirus Disease 2019 (COVID-19) public health emergency, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) delayed the requirement for states to transition from the current resource utilization group (RUG-III/RUG-IV) case-mix classification model used under the Medicare skilled nursing facility prospective payment system to the patient driven payment model until October 1, 2023. In compliance with CMS requirements, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the standards for payment and reimbursement for nursing facilities in order to implement the patient driven payment model for case-mix classification and mandate use of the optional state assessment item set (*Louisiana Register*, Volume 49, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 1, 2023 Emergency Rule.

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 of October 1, 2023 and after, the department mandates the use of the optional state assessment (OSA) item set. The OSA 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 46:2742.

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 46:1684 (December 2020), LR 50:

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 the optional state assessment (OSA).

* * *

Optional State Assessment (OSA)—assessment required by Louisiana Medicaid to report on Medicaid-covered stays. Allows nursing facility providers using RUG-III or RUG-IV models as the basis for Medicaid payment to do so until the legacy payment model (RUG-III) ends.

* * *

Patient Driven Payment Model (PDPM)—the proposed new Medicare payment rule for skilled nursing facilities. The PDPM identifies and adjusts different case-mix components for the varied needs and characteristics of a resident's care and then combines these with a non-case-mix component to determine the full skilled nursing facilities (SNF) prospective payment system (PPS) per diem rate for that resident.

* * *

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 46:1684 (December 2020), LR 50:

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

Provider Impact Statement

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

Public Comments

Interested persons may submit written comments to Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on November 9, 2023. 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 November 28, 2023 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 November 9, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nursing Facilities Optional State Assessment

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

It is anticipated of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule continues the provisions of the October 1, 2023 Emergency Rule, which amended the standards for payment and reimbursement for nursing facilities in order to implement the required transition from the current RUG-III/RUG-IV case-mix classification model used under the

Medicare skilled nursing facility prospective payment system to the patient driven payment model (PDPM) which was delayed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) until October 1, 2023 due to the COVID-19 public health emergency.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$378 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the October 1, 2023 Emergency Rule, which amended the standards for payment and reimbursement for nursing facilities in order to implement the required transition from the current RUG-III/RUG-IV case-mix classification model used under the Medicare skilled nursing facility prospective payment system to the patient driven payment model (PDPM) which was delayed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) until October 1, 2023 due to the COVID-19 public health emergency. The proposed rule implements the PDPM case-mix classification model for skilled nursing facilities and mandates use of the optional state assessment item set. It is anticipated that implementation of this proposed rule will not result in costs or benefits to nursing facility providers or small businesses in FY 23-24, FY 24-25, and FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

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