

# Emergency Rules

## DECLARATION OF EMERGENCY

### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Natural Disasters, Deferments  
(LAC 28:IV.2103 and 2105)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend the rules of the Scholarship/Grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families resulting in students being unable to attend college and thereby depriving these students of a postsecondary education and weakening the state's workforce. LASFAC has determined that this Emergency Rule is necessary to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective October 13, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0668E)

#### Title 28

#### EDUCATION

#### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

#### Chapter 21. Miscellaneous Provisions and Exceptions §2103. Circumstances Warranting Exception to the Initial and Continuous Enrollment Requirements

A. - F. ...

G. Natural Disaster Exceptions

1. For the purposes of this subsection, "displaced students" are TOPS recipients and students eligible for TOPS and:

a. on August 26, 2005:

i. were enrolled at one of the following eligible college or university campuses:

- (a). University of New Orleans;
- (b). Dillard University;
- (c). Delgado Community College;
- (d). Nunez Community College;
- (e). Louisiana State University Health Sciences Center at New Orleans;
- (f). Southern University at New Orleans;
- (g). Loyola University;
- (h). New Orleans Baptist Theological Seminary;
- (i). Our Lady of Holy Cross College;
- (j). Tulane University;
- (k). Xavier University;

- (l). St. Josephs Seminary College;
- (m). Louisiana Technical College, Jefferson Campus;
- (n). Louisiana Technical College, Sidney N. Collier Campus;
- (o). Louisiana Technical College, Slidell Campus;
- (p). Louisiana Technical College, Sullivan Campus;
- (q). Louisiana Technical College, West Jefferson Campus; or

ii. whose home of record was one of the following Louisiana parishes:

- (a). Jefferson;
- (b). Lafourche;
- (c). Orleans;
- (d). Plaquemine;
- (e). St. Bernard;
- (f). St. Tammany;
- (g). Tangipahoa;
- (h). Washington;

b. on September 23, 2005:

i. were enrolled at one of the following eligible college or university campuses:

- (a). SOWELA Technical Community College;
- (b). Louisiana Technical College, Gulf Area Campus;
- (c). Louisiana Technical College, Morgan Smith Campus;
- (d). Louisiana Technical College, Lamar Salter Campus;
- (e). Louisiana Technical College, Oakdale Campus;
- (f). Louisiana Technical College, Sabine Valley Campus; or

ii. whose home of record was one of the following Louisiana parishes:

- (a). Acadia;
- (b). Allen;
- (c). Beauregard;
- (d). Calcasieu;
- (e). Cameron;
- (f). Iberia;
- (g). Jefferson Davis;
- (h). Lafayette;
- (i). St. Mary;
- (j). Terrebonne;
- (k). Vermilion.

2. For the purposes of this Subsection, "home of record" is:

a. the domiciliary address of a dependent student's parent or court ordered custodian; or

b. the domiciliary address of an independent student.

3. For the purposes of this Subsection, "natural disaster" is limited to Hurricane Katrina and/or Hurricane Rita.

a. For the 2005-2006 academic year (college), displaced students are not required to enroll as full time students, to maintain continuous enrollment or to earn at least 24 hours during the 2005-2006 Academic Year (College).

4.a. Displaced students may enroll on a part-time basis in an eligible college or university without losing TOPS eligibility. Upon request by the student, the eligible college or university may bill for these part-time students.

b. The terms of eligibility for a displaced student whose part-time enrollment is paid by TOPS will be reduced by one full semester (term) for each semester (term) (part or full-time) paid.

d. Institutions must document the displaced student's request for part-time payment of the award.

e. If a displaced student enrolls in an eligible college or university during the 2005-2006 academic year (College) and receives grades, those grades will be included in calculating the student's cumulative grade point average.

5.a. For the 2005-2006 Academic Year (College), students who are not Displaced Students, but due to the effects of a Natural Disaster were unable to enroll for the first time as full time students by the deadline or to enroll as full time students or to maintain continuous enrollment or to earn at least 24 hours during the Academic Year (College), may submit a request for an exception in accordance with §2103.D, based on one of the circumstances listed in §2103.E, or in accordance with the following procedures for the circumstances described in this Subsection.

i. The student should file the application for exception as soon as it is known that the student will not meet one or more of the continuing eligibility requirements to ensure the earliest reinstatement of the award. The student must submit the application for exception no later than six months after the date of the notice of cancellation. The deadline for filing the exception shall be prominently displayed on the notice of cancellation. If the applicant for an exception is a dependent student, a parent or court ordered custodian of the dependent student may submit the application for exception on behalf of the applicant.

ii. If determined eligible for an exception, the recipient will be reinstated if he or she enrolls in the first fall, winter or spring semester or term immediately following the exception ending date.

b. Natural Disaster Exception (for other than displaced students)

i. Definition. The effects of a natural disaster prevented the student/recipient from enrolling as a full time student or continuing enrollment or earning 24 hours during the 2005-2006 Academic Year (College).

ii. Certification Requirements. The student /recipient must submit:

(a). a completed exception request form; and

(b). a written statement detailing the natural disaster's impact on the student and/or the student's immediate family (mother, father, custodian, siblings and/or spouse and children), which prevented the student from meeting the continuation requirements, including the length of the impact; and

(c). documentation corroborating the student's statement (examples: photographs of damage; insurance, FEMA, fire and/or police reports; statements from public

officials; statements from family members or other persons with actual knowledge; receipts and invoices for work done and materials purchased).

iii. Maximum Length of Exception. Up to two consecutive semesters (three consecutive quarters).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1648 (December 1997), repromulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), repromulgated LR 27:1866 (November 2001), amended LR 27:1875 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:2330 and 2333 (November 2002), LR 29:126 (February 2003), LR 29:2373 (November 2003), LR 29:2373 (November 2003), LR 30:785 (April 2004), LR 30:1167 (June 2004), LR 31:1060 (May 2005), LR 32:

### **§2105. Repayment Obligation, Deferment and Cancellation**

A. - B.8.b. ...

#### **9. Natural Disaster Deferments**

a. For the purposes of this subsection, "Displaced Students" are recipients of the Rockefeller State Wildlife Scholarship or TOPS Teacher Award who are in repayment status and:

i. on August 26, 2005, whose Home of Record was one of the following Louisiana parishes:

- (a). Jefferson;
- (b). Lafourche;
- (c). Orleans;
- (d). Plaquemine;
- (e). St. Bernard;
- (f). St. Tammany;
- (g). Tangipahoa;
- (h). Washington;

ii. on September 23, 2005, whose home of record was one of the following Louisiana parishes:

- (a). Acadia;
- (b). Allen;
- (c). Beauregard;
- (d). Calcasieu;
- (e). Cameron;
- (f). Iberia;
- (g). Jefferson Davis;
- (h). Lafayette;
- (i). St. Mary;
- (j). Terrebonne;
- (k). Vermilion.

b. For the purposes of this subsection, "home of record" is:

i. the domiciliary address of a dependent student's parent or court ordered custodian; or

ii. the domiciliary address of an independent student.

c. For the purposes of this subsection, "natural disaster" is limited to Hurricane Katrina and/or Hurricane Rita.

d. The loan payments for displaced students are deferred and accrual of interest is suspended from August 26, 2005 through August 31, 2006.

e. For the period of August 26, 2005, through August 31, 2006, recipients of the Rockefeller State Wildlife

Scholarship or TOPS Teacher Award who are in repayment status and who are not displaced students, but who are unable to repay their loan during the academic year (college) due to the effects of a natural disaster, may submit a request for deferment of payments and suspension of accrual of interest in accordance with §2105.D, based on one of the circumstances listed in §2103.B.1 through 8 or the following circumstance.

i. The effects of a natural disaster prevented the student/recipient from making payments during the period of August 26, 2005, through August 31, 2006.

ii. Certification Requirements. The student /recipient must submit:

(a). a completed exception request form; and

(b). a written statement detailing the natural disaster impact on the student and/or the student's immediate family (mother, father, custodian, siblings and/or spouse and children), which prevented the student from meeting the repayment requirements, including the length of the impact; and

(c). Documentation corroborating the student's statement (examples: photographs of damage; insurance, FEMA, fire and/or police reports; statements from public officials; statements from family members or other persons with actual knowledge; receipts and invoices for work done and materials purchased).

iii. Maximum Length of Exception. Through August 31, 2006.

C. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), amended LR 28:775 (April 2002), LR 30:781 (April 2004), LR 30:1167 (June 2004), LR 30:1168 (June 2004), LR 32:

George Badge Eldredge  
General Counsel

0511#006

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

8-Hour Ambient Ozone Standard and  
Nonattainment New Source Review  
(LAC 33:III.111, 504, 607, 711, 2201, and 2202)(AQ253E1)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to implement rules concerning the revised primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone and transitional provisions for nonattainment new source review under the revised standard.

This is a renewal of Emergency Rule AQ253E, which was effective on June 15, 2005, and published in the *Louisiana Register* on June 20, 2005. The department is drafting a rule to promulgate these regulation changes.

On April 30, 2004, EPA enacted 8-hour ozone NAAQS classifications, effective June 15, 2004 (69 FR 23858). The revised 8-hour NAAQS is more protective than the existing 1-hour ozone NAAQS. In order to transition from the existing 1-hour standard to the new 8-hour standard, EPA adopted a rule for implementation of the 8-hour ozone NAAQS-Phase 1 (the "Phase 1 Implementation Rule") on April 30, 2004 (69 FR 23951). In the Phase 1 Implementation Rule, EPA revoked the 1-hour standard in full, including the associated designations and classifications, effective on June 15, 2005.

Litigation by a number of stakeholders pending in the United States Court of Appeals for the District of Columbia Circuit challenged various aspects of the Phase 1 Implementation Rule, resulting in EPA's agreement to reconsider several portions of the Rule through renewed notice and public comment. EPA only recently made final decisions on reconsideration, thus clearing the way for effectiveness of the Phase 1 Implementation Rule (70 FR 30592, May 26, 2005). As a result, Louisiana is required to adopt the 8-hour revised standard and measures to implement such standard. This Emergency Rule is necessary to address two of the most immediate aspects of implementation: 1) revision of LAC 33:III.711 to replace the 1-hour primary ambient air quality standard with the 8-hour standard; and 2) revision of nonattainment new source review provisions for parishes that were reclassified from severe under the 1-hour standard to marginal under the 8-hour standard (parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge). Because such parishes are still in nonattainment and because EPA has not yet developed guidance for nonattainment new source review under the 8-hour standard, the department is adopting measures to ensure that these parishes continue to make progress toward attainment while still accommodating growth. Regulatory changes will also delete references to the 1-hour standard and substitute the 8-hour standard, and take other actions to transition to the 8-hour standard. The attainment date for the Baton Rouge area under the 8-hour standard is June 15, 2007. Failure to adopt this Rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare as the department would not have the authority to enforce the 8-hour standard.

This Emergency Rule is effective on October 13, 2005, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning AQ253E1, you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov](http://www.deq.louisiana.gov) under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 1. General Provisions**

**§111. Definitions**

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

\* \* \*

*Ozone Exceedance*—a daily maximum 8-hour average ozone measurement that is greater than the value of the standard.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

**Chapter 5. Permit Procedures**

**§504. Nonattainment New Source Review Procedures**

A. ...

1. For an area that is designated incomplete data, transitional nonattainment, marginal, moderate, serious, or severe nonattainment for the ozone national ambient air quality standard, VOC and NO<sub>x</sub> are the regulated pollutants under this Section. VOC and NO<sub>x</sub> emissions shall not be aggregated for purposes of determining major stationary source status and significant net emissions increases.

2. Except as specified in Subsection H of this Section, the potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Table 1 of this Section to determine whether the source is major.

3. Except as specified in Subsection H of this Section, the emissions increase which would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

4. Except as specified in Subsection H of this Section, the net emissions increase shall be compared to the significant net emissions increase values listed in Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. ...

6. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of the Section on or before June 14, 2005, the provisions of this Section governing serious ozone nonattainment areas shall apply to VOC and NO<sub>x</sub> increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, and for which the nonattainment new source

review (NNSR) permit was issued in accordance with Subsection D of the Section on or before June 14, 2005, the provisions of this Section governing severe ozone nonattainment areas shall apply to VOC and NO<sub>x</sub> increases.

B. - D.4. ...

5. Except as specified in Subsection H of this Section, emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Table 1 of this Section, in the area where the national ambient air quality standard for that pollutant is violated.

D.6. - F. ...

1. All emission reductions claimed as offset credit shall be from decreases of the same pollutant or pollutant class (e.g., VOC) for which the offset is required. Interpollutant trading, for example using a NO<sub>x</sub> credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection H of this Section, offsets shall be required at the ratio specified in Table 1 of this Section.

F.2. - G. *Visibility Impairment*. ...

H. Notwithstanding the parish's nonattainment status with respect to the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, the provisions of this Subsection shall apply to sources located in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub>, consideration of the net emissions increase will be triggered for any project that would:

a. increase emissions of VOC or NO<sub>x</sub> by 25 tons per year or more, without regard to any project decreases;

b. increase emissions of highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:

- i. acetaldehyde;
- ii. 1,3-butadiene;
- iii. butenes (all isomers);
- iv. ethylene;
- v. propylene;
- vi. toluene;
- vii. xylene (all isomers);
- viii. isoprene.

2. The following sources shall provide offsets for any net emissions increase:

a. a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub>;

b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub> with a significant net emissions increase of VOC, including HRVOC, or NO<sub>x</sub> of 25 tons per year or more.

3. The minimum offset ratio for an offset required by Paragraph H.2 of this Section shall be 1.2 to 1.

4. This Subsection shall become effective June 15, 2005.

Table 1. - Footnote PM<sub>10</sub>. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:

**Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking**

**§607. Determination of Creditable Emission Reductions**

A. - C. ...

1. If the design value for the nonattainment area is above the national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory except that beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. - 4.a. ...

i. if the design value for the nonattainment area is above the NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and

C.4.b. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

**Chapter 7. Ambient Air Quality**

**§711. Tables 1, 1a, 2—Air Quality**

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM <sub>10</sub>	50 µg/m <sup>3</sup>	(Annual geometric mean)
	150 µg/m <sup>3</sup>	(Maximum 24-hour concentration not to be exceeded more than once per year)

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
Sulfur Dioxide (SO <sub>2</sub> )	80 µg/m <sup>3</sup>	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m <sup>3</sup>	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m <sup>3</sup>	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m <sup>3</sup>	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO <sub>2</sub> )	100 µg/m <sup>3</sup>	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m <sup>3</sup>	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM <sub>10</sub>	50 µg/m <sup>3</sup>	(Annual arithmetic mean)
	150 µg/m <sup>3</sup>	(Maximum 24-hour concentration not to be exceeded more than once per year)
Sulfur Dioxide (SO <sub>2</sub> )	1,300 µg/m <sup>3</sup>	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m <sup>3</sup>	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m <sup>3</sup>	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO <sub>2</sub> )	100 µg/m <sup>3</sup>	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m <sup>3</sup>	(Maximum arithmetic mean averaged over a calendar quarter)

B.1. - C. Table 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

**Chapter 22. Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)**

**§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence**

A. - C.20. ...  
D. Emission Factors

1. The following tables list NO<sub>x</sub> emission factors that shall apply to affected point sources located at affected facilities in the Baton Rouge Nonattainment Area or the Region of Influence.

D.1. Table D-1A. - I.5. ...

J. Effective Dates

1. The owner or operator of an affected facility shall modify and/or install and bring into normal operation NO<sub>x</sub> control equipment and/or NO<sub>x</sub> monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. The owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO<sub>x</sub> reduction controls or a NO<sub>x</sub> monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002), repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

**§2202. Contingency Plan**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:1170 (June 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 32:

Mike D. McDaniel, Ph.D.  
Secretary

0511#004

**DECLARATION OF EMERGENCY**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division**

Expedited Penalty Agreement  
(LAC 33:I.801, 803, 805, and 807)(OS054E7)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards,

guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements.

This is a revision of and will replace Emergency Rule OS054E6, which was effective on October 8, 2005, and published in the *Louisiana Register* on October 20, 2005, and is hereby rescinded. This version of the Emergency Rule retains the edited language of OS054E6 and revises the penalty amounts of three Stage II Vapory Recovery violations. The Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, unnecessarily utilize resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the pilot program to commence immediately, without the delay and inflexibility of a permanent Rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent rule.

This Emergency Rule is effective on November 10, 2005, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS054E7 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at [www.deq.louisiana.gov](http://www.deq.louisiana.gov) under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 1. Departmental Administrative Procedures**

**Chapter 8. Expedited Penalty Agreement**

**§801. Definitions**

*Agency Interest Number*—a site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

*Qualifying Permit Parameter*—for the purposes of these regulations: total organic carbon (TOC), chemical oxygen demand (COD), dissolved oxygen (DO), 5-day biochemical

oxygen demand (BOD<sub>5</sub>), 5-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS), fecal coliform, and/or oil and grease.

*Expedited Penalty Agreement*—a predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

### **§803. Purpose**

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;
2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;
3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);
4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and
5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

### **§805. Applicability**

A. **Limit of Penalty Amount.** The total penalty assessed for the expedited penalty agreement shall not exceed \$1,500 for one violation or \$3,000 for two or more violations per penalty assessed.

B. **Departmental Discretion.** The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. **Notification to the Respondent.** The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. **Certification by the Respondent.** By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. **Nine Factors for Consideration.** An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration are satisfied.

1. **The History of Previous Violations or Repeated Noncompliance.** The violation identified in the expedited penalty agreement is not the same as or similar to a violation that occurred at the facility under the same agency interest number, and that was identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued to the respondent by the department within the previous two years. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. **The Nature and Gravity of the Violation.** The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation within 30 days of receipt of the expedited penalty agreement.

3. **The Gross Revenues Generated by the Respondent.** By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. **The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders.** The respondent is culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified timeframe demonstrates respect for the regulations and a willingness to comply.

5. **The Monetary Benefits Realized Through Noncompliance.** The respondent's monetary benefit from noncompliance for the violation identified shall be considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. **The Degree of Risk to Human Health or Property Caused by the Violation.** The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. **Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged.** Depending upon the type of violation, failure to report may or may not be applicable to

this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant one 30-day extension in order for the respondent to correct the violation cited in the expedited penalty agreement.

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified timeframe, the department may issue additional enforcement actions including, but not limited to, a civil penalty assessment and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department may notify the respondent that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the

department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the following issuance dates shall apply.

1. If the respondent does not wish to participate in the expedited penalty agreement program, the issuance date for the Notice of Potential Penalty portion of the document shall be 30 days after the respondent receives the document.

2. If the respondent does wish to participate in the expedited penalty agreement program, the issuance date for the expedited penalty agreement portion of the document shall be the date the administrative authority signs the document for the second, and final, time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

**§807. Types of Violations and Expedited Penalty Amounts**

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
<b>ALL MEDIA</b>			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3917.A	\$300	Per day
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3925.A	\$300	Per day
<b>AIR QUALITY</b>			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide notice of change of ownership within 90 days after the change.	LAC 33:III.517.G	\$200	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence
Failure to submit perchloroethylene usage reports by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$300	Per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	LAC 33:III.905	\$100	Per occurrence
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4013.E	\$500	Per occurrence
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4035.H	\$500	Per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4049.G	\$500	Per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4069.G	\$500	Per occurrence
SOLID WASTE			
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$200	Per occurrence
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G	\$200	Per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D	\$100	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to post required notifications to the public.	LAC 33:VII.10519.E	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H	\$200	Per occurrence
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10535.B	\$200	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$300	Per occurrence
Failure of out-of-state or out-of-country transporters to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence
Failure by collectors or collection centers to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operators to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
Failure of recyclers to provide notification of their existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of waste tire or waste tire material recyclers to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
Failure to follow the requirements for manifest discrepancies.	LAC 33:VII.10533.C	\$300	Per occurrence
WATER QUALITY			
Failure to properly operate and maintain a facility:			
1. Failing to provide disinfection at any applicable sewage treatment plant.	LAC 33:IX.2701.E	\$200	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
2. Failing to operate/maintain backup or auxiliary systems within a treatment system.	LAC 33:IX.2701.E	\$200	Per occurrence
3. Failing to implement adequate laboratory controls and quality assurance procedures.	LAC 33:IX.2701.E	\$200	Per occurrence
4. Allowing excessive solids to accumulate within a treatment system.	LAC 33:IX.2701.E	\$200	Per occurrence
5. Allowing sample holding times to expire before analyzing any sample and failing to follow approved methods when collecting and analyzing samples.	LAC 33:IX.2701.J.4	\$200	Per occurrence
Failure to sample any permit parameter in accordance with an LPDES permit.	LAC 33:IX.2701.A	\$100	Per permit parameter
Failure to submit Discharge Monitoring Reports (DMRs):			
1. Failing to submit DMRs, for any outfall, required by any LPDES individual permit.	LAC 33:IX.2701.L.4.a	\$200	Per submittal (per outfall)
2. Failing to submit DMRs, for any outfall, required by any LPDES general permit.	LAC 33:IX.2701.L.4.a	\$100	Per submittal (per outfall)
Exceedance of LPDES permit effluent limitations:			
1. Exceeding the daily maximum or weekly average concentration permit limit for any qualifying permit parameter.	LAC 33:IX.2701.A	\$150	Per permit parameter (per exceedance)
2. Exceeding a monthly average concentration permit limit for any qualifying permit parameter.	LAC 33:IX.2701.A	\$300	Per permit parameter (per exceedance)
3. Exceeding a daily maximum or weekly average mass loading permit limit for any qualifying permit parameter.	LAC 33:IX.2701.A	\$200	Per permit parameter (per exceedance)
4. Exceeding a monthly average mass loading permit limit for any qualifying permit parameter.	LAC 33:IX.2701.A	\$400	Per permit parameter (per exceedance)
5. Discharging effluent outside of the permitted range for pH (grab samples only).	LAC 33:IX.2701.A	\$150	Per grab sample (per exceedance)
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility.	LAC 33:IX.905	\$500	Per occurrence
2. Failing to implement any component of an SPC plan.	LAC 33:IX.905	\$100	Per occurrence
Failure to submit certain reports as required by an LPDES permit, including storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by an LPDES permit.	LAC 33:IX.2701.A	\$500	Per occurrence
Failure to submit a Notice of Intent for coverage under the LPDES Storm Water Permit for Construction Activities or under the LPDES Storm Water Multi-Sector General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence
Failure to provide notification of facility changes as required by an LPDES permit.	LAC 33:IX.2701.L.1	\$300	Per occurrence
Failure to submit a noncompliance report required by an LPDES individual permit.	LAC 33:IX.2701.L.7	\$200	Per occurrence
Failure to submit a noncompliance report required by an LPDES general permit.	LAC 33:IX.2701.L.7	\$100	Per occurrence
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register existing or new USTs containing regulated substances.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$250 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$100 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to upgrade existing UST systems to new system standards as specified.	LAC 33:XI.303.C	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report, investigate, and/or clean up any spills and overfills.	LAC 33:XI.501.C	\$1,500	Per inspection
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with recordkeeping requirements.	LAC 33:XI.503.B	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500 and completion of a department-sponsored compliance class	Per inspection
Failure to satisfy the additional requirements for petroleum UST systems as specified.	LAC 33:XI.703.B	\$350 and completion of a department-sponsored compliance class	Per inspection
Failure to maintain release detection records.	LAC 33:XI.705	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.2 or 707	\$500 and completion of a department-sponsored compliance class	Per occurrence
Failure to investigate and confirm all suspected releases of regulated substances that require reporting under LAC 33:XI.707 within seven days.	LAC 33:XI.711	\$1,500	Per occurrence
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with permanent closure and/or changes in service procedures.	LAC 33:XI.905	\$500	Per inspection

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

Mike D. McDaniel, Ph.D.  
Secretary

0511#077

## DECLARATION OF EMERGENCY

Department of Environmental Quality  
Office of Secretary  
Legal Affairs Division

Laboratory Accreditation Exemption for  
Analyses of Target Volatile Organic Compounds  
(LAC 33:I.4719)(OS064E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality (Department) to use emergency procedures to establish rules,

and of R.S. 30:2011, which allows the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule.

This is a renewal of Emergency Rule OS064E1, which was effective on July 16, 2005, and published in the *Louisiana Register* on July 20, 2005. This version of the Emergency Rule revises LAC 33:I.4719.E to establish laboratory requirements outlined in the Technical Assistance Document for Sampling and Analysis of Ozone Precursors (TAD) as guidance to those responsible for implementing the Photochemical Assessment Monitoring Stations (PAMS) program.

The department recently issued a number of Administrative Orders (AOs) to certain facilities requiring monitoring and testing of ozone precursors. The intent of the fence-line monitoring program in the AOs is to make the data generated similar to and comparable to the data generated in the EPA Photochemical Assessment Monitoring Stations (PAMS) program. Compliance with these AOs will drastically increase the number of samples collected and analyzed. The department relies on analytical data submitted both directly and indirectly to the department to determine compliance with state and federal regulations. As a result of deadlines established in current Louisiana regulations, the department is prohibited from accepting data from commercial laboratories that have not received departmental accreditation. A finding of imminent peril to public health, safety, and welfare is based on the insufficient number of accredited laboratories existing at this time that are capable of performing the volume of sample analyses within the time frame required by the department. The department relies on analytical data to determine permit compliance, enforcement issues, and effectiveness of remediation of soils and groundwater. Permit issuance and compliance are effective means of determining the impact on human health and the environment. The department must have access to accurate, reliable, precise analytical data in order to meet its mandate to protect human health and the environment. This Emergency Rule will allow the department to accept data from laboratories that have supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory.

This Emergency Rule is effective on November 13, 2005, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS064E2, you may contact the Regulation Development Section at (225) 219-3550.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part I. Office of the Secretary

#### Subpart 3. Laboratory Accreditation

#### Chapter 47. Program Requirements

#### §4719. Implementation

A. All commercial laboratories analyzing data as of the effective date of these regulations that are directly or indirectly submitting data to the department must submit an application for accreditation as required in LAC 33:I.4701.A.1, including the review fee, by July 1, 2000. The

department shall not accept laboratory data generated by laboratories that do not comply with this deadline until such laboratories receive accreditation and fully comply with the requirements of this Section. Except as provided in Subsection E of this Section, the department shall not accept environmental data submitted to the department either directly or indirectly until the laboratory has applied for accreditation under these regulations.

B. All laboratories subject to these regulations must receive accreditation from the department, as provided in these regulations, undergo an on-site inspection as specified in LAC 33:I.4701.A.2, and successfully participate in proficiency evaluations as required in LAC 33:I.4701.A.3 by December 31, 2000, or as otherwise agreed to by the department and the applicant, not to exceed one year from December 31, 2000. Except as provided in Subsection E of this Section, the department shall not accept data generated by laboratories that do not comply with these deadlines until such laboratories receive accreditation and fully comply with the requirements of this Section.

C. - D. ...

E. The department shall accept, until December 31, 2007, analytical data generated by a laboratory that is not accredited under these regulations, provided that:

1. the laboratory has supporting documentation, and produces the documentation upon request by the department, showing the quality assurance and quality control programs used in generating analytical data by the laboratory and that the laboratory follows all requirements established by the Technical Assistance Document for Sampling and Analysis of Ozone Precursors, EPA 600-R-98/161 (TAD);

2. the laboratory is submitting analytical data pursuant to a departmental administrative order to a facility requiring monitoring and testing of ozone precursors; and

3. the laboratory is submitting analytical data for any of the target volatile organic compounds listed in Table 1 of this Section using the TAD, with modifications as specified below:

a. a reporting limit of at least 10 parts per billion (ppb) must be used;

b. any analytical result below the method detection limit (MDL) must be reported and flagged as an estimated value; and

c. any analytical result at the instrument detection limit (IDL) must be reported and flagged as an estimated value.

<b>Table 1</b>	
<b>Target Volatile Organic Compounds</b>	
Ethylene	
Acetylene	
Ethane	
Propylene	
Propane	
Isobutane	
1-butene	
n-Butane	
trans-2-Butene	
cis-2-Butene	
Isopentane (2-methylbutane)	
1-Pentene	
n-Pentane	
Isoprene	
trans-2-Pentene	

<b>Table 1</b>	
<b>Target Volatile Organic Compounds</b>	
cis-2-Pentene	
2,2-dimethylbutane	
Cyclopentane	
2,3-dimethylbutane	
2-methylpentane	
3-methylpentane	
1-Hexene	
n-Hexane	
Methylcyclopentane	
2,4-dimethylpentane	
Benzene	
Cyclohexane	
2-methylhexane	
2,3-dimethylpentane	
3-methylhexane	
2,2,4-trimethylpentane	
n-Heptane	
Methylcyclohexane	
2,3,4-trimethylpentane	
Toluene	
2-methylheptane	
3-methylheptane	
n-Octane	
Ethylbenzene	
m/p Xylene	
Styrene	
o Xylene	
1,3-butadiene	

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:312 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Mike McDaniel, Ph.D.  
Secretary

0511#078

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Board of Examiners of Certified Shorthand Reporters**

Emergency Extension of Suspension Date for  
Renewal of Certificates (LAC 46:XXI.501)

Under the authority of R.S. 37:2554 and in accordance with R.S. 49:951 et seq., the Louisiana Board of Examiners of Certified Shorthand Reporters (CSR Board) advertises its intent to amend LAC 46:XXI.501, which sets out procedures governing the expiration and renewal of certificates.

The practice of shorthand reporting has been disrupted by the devastation and disorder resulting from Hurricanes Katrina and Rita. Large numbers of Louisiana residents, many of them certified court reporters, have been forced from their homes and regular places of work. This emergency enactment is necessary to allow those persons displaced by Hurricanes Katrina and Rita additional time in which to renew their certificates.

This Rule shall become effective on November 15, 2005, and shall remain in effect for 120 days or until it becomes re-

enacted by Emergency Rule or through the normal promulgation process, whichever comes first.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part XXI. Certified Shorthand Reporters**

**Chapter 5. Certificates**

**§501. Expiration of Certificates**

A. All certificates shall be suspended as of 12 p.m. on June 30, 2006 if not renewed. To renew a certificate, the certificate holder shall, on or before the date on which the certificate would otherwise be suspended, pay the renewal fee established by the board. A suspension under this Section shall be effective until all delinquent fees have been paid in full.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:531 (August 1988), LR 19:1538 (December 1993), Office of the Governor, Board of Examiners of Certified Shorthand Reporters, LR 32:

Judge Guy Holdridge  
Chairman

0511#001

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Division of Administration  
Board of Cosmetology**

**Certification of Payment of Contractual  
Fees Owed to Schools  
(LAC 46:XXXI.309 and 313)**

The Louisiana State Board of Cosmetology hereby adopts the following Emergency Rule governing examination of applicants and transfer of students. These rules are adopted in accordance with R.S. 37:575(A)(4), 37:596, 37:598(A)(4) and the Emergency Rules provisions of the Administrative Procedure Act, R.S. 49:953(B), to allow examination of applicants and transfer of students who attended schools unable to provide certification of payment of contractually owed fees due to temporary or permanent closure of schools or due to loss of records.

Hurricane Katrina struck southeast Louisiana on August 29, 2005 and Hurricane Rita struck southwest Louisiana on September 24, 2005 resulting in catastrophic damage. These catastrophes have severely impacted over a million residents, damaged thousands of homes, businesses and many cosmetology schools. Additionally, these disasters have left many communities without electricity, water and telephone service for extended periods of time.

Many of the state's cosmetology students and graduates of cosmetology schools have suffered losses of personal property and been displaced from their residences. The temporary and permanent closure of cosmetology schools

and the lack of access to student records will severely limit the ability of many students to complete their education and the ability of many cosmetology school graduates to take examinations required for licensure.

The Louisiana State Board of Cosmetology finds that an imminent peril to the welfare of cosmetology students and graduates of cosmetology students requires the adoption of these Emergency Rules to permit students to transfer to other cosmetology schools and to permit graduates of cosmetology schools to take examinations without certification of payment of contractual fees owed to schools for schools which are unable to provide certifications due to temporary or permanent closures or loss of records.

This Emergency Rule is effective October 3, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until the promulgation of a permanent Rule, whichever is sooner.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part XXXI. Cosmetologists**

**Chapter 3. Schools and Students**

**§309. Examination of Applicants**

A. - B. ...

C. Fees. All fees contractually owed by an applicant to a cosmetology school from which they graduated must be paid before applying for an examination, for a certificate of registration or for a license. If the school attended by the applicant is temporarily or permanently closed or has suffered a loss of records and is therefore unable to issue a certification that all fees contractually owed by the applicant to the cosmetology school from which they graduated have been paid, the applicant shall not be required to provide the certification required by this subsection.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(4) and 37:586.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003), LR 32:

**§313. Transfer Students**

A. ...

B. In-State. When enrolling a transfer student from another school within Louisiana, the school owner must provide the board with the following:

1. ..

2. certification of payment of contractual fees owed to the former school; unless the former school is unable to certify payment of contractual fees owed due to temporary or permanent closure or loss of records; and

B.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:598(A)(4).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003), LR 32:

Jackie Burdette  
Executive Director

0511#003

# DECLARATION OF EMERGENCY

## Office of the Governor Office of Financial Institutions

Louisiana Community Development  
Financial Institution Program  
(LAC 10:XV.1701-1712)

The Office of Financial Institutions, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), adopts the following Emergency Rules of the Louisiana Community Development Financial Institutions Act as authorized by R.S. 51:3083. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective October 1, 2005, and shall remain in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Office of Financial Institutions has found an immediate need to provide direction to Louisiana community development financial institutions who are seeking to participate in the Louisiana Community Development Financial Institution Act, which became effective July 12, 2005. Without these Emergency Rules the public welfare may be harmed as a result of the inability of Louisiana community development financial institutions to raise capital, to then invest in Louisiana entrepreneurial businesses operating in low income communities that are in need of capital for survival, expansion, new product development, or similar business purposes. The failure to adopt these rules may impede economic development in Louisiana.

### Title 10

#### FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

##### Part XV. Other Regulated Entities

#### Chapter 17. Louisiana Community Development Financial Institution Program

##### §1701. Description of Program

A. These rules implement the Louisiana Community Development Financial Institution (LCDFI) Program pursuant to R.S. 51:3075 et seq. This program was created by Act 491 of the 2005 Louisiana Legislature to further community development, diminish poverty, provide assistance in the formation and expansion of businesses in economically distressed areas, which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of Louisiana entrepreneurial businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

##### §1702. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

###### *Affiliate and/or Affiliated Company—*

a. the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity

controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a Louisiana entrepreneurial business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, *controls*, is *controlled* by, or is under common control with, a Louisiana entrepreneurial business;

*Applicant*—a Louisiana corporation organized under an incorporating statute which applies to the commissioner for certification as a LCDFI.

*Application*—a completed application as determined by the commissioner.

###### *Associate of a LCDFI—*

a. any of the following:

i. a person serving a LCDFI, or an entity that directly or indirectly controls a LCDFI, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other employees), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), external accountant, or outside general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the LCDFI;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §1702. *Associate of a LCDFI*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §1702. *Associate of a LCDFI*.a.i, ii or iii;

v. a person that invests in the LCDFI and has received an income tax credit reduction under the LCDFI Act;

vi. an affiliate of any person described in §1702. *Associate of a LCDFI*.a.v; or

vii. a person that, within six months before or at any time after the date that a LCDFI invests in the person, is controlled by a LCDFI or any of its affiliates.

(a). However, even though a LCDFI may not intend to control a business in which it invests, it may obtain short-term (less than one year) control over the Louisiana entrepreneurial business after its initial investment if such control is acquired as a means of protecting the LCDFI's investment resulting from a material breach of any financing agreement. Such control will not create an associate relationship under §1702. *Associate of a LCDFI*.a.vii.(a).

b. For the purposes of this definition, if any associate relationship described in §1702. *Associate of a LCDFI*.a.i-vi exists between a person and the LCDFI at any time within six months before or at any time after the date that the LCDFI makes its initial investment in such person, that associate relationship is considered to exist on the date of the investment.

*Business Plan*—a written narrative providing a general description of the proposed Louisiana community

development financial institution (“LCDFI”) which should include, at a minimum, a description of the LCDFI’s organizational structure; its location; the types of lending and financing it intends to offer and to whom; whether it intends to provide management assistance and if so, to what extent and to whom; and whether the LCDFI will operate as a profit or nonprofit corporation.

*Capitalization*—for purposes of initial certification, pursuant to R.S. 51:3080(B):

a. Generally Accepted Accounting Principles (GAAP) Capital—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; less all organization costs;

b. Less—the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the LCDFI: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital.

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal of capital within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit reduction.

*Change of Control*—for purposes of R.S. 51:3081(F) shall mean:

a. a change in beneficial ownership of 50 percent or more of the outstanding voting shares of the LCDFI; or

b. individuals who constitute the voting power of the Board of Directors, Board of Managers or other governing board of the LCDFI as of the later of the LCDFI's certification date or the date of the LCDFI's last notification under R.S. 51:3081(F) cease to comprise more than 50 percent of the voting power of such Board of Directors, Board of Managers, or other board; or

c. a change in the general partner or manager of the LCDFI or a *change of control* with respect to such general partner or manager; or

d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the LCDFI that was the party to the merger or consolidation transaction.

*Control*—

a. Solely for purposes of determining whether a Louisiana entrepreneurial business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a LCDFI, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is exercised with respect to a specified person or legal entity.

b. For all other purposes, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

*Date on Which an Investment Pool Transaction Closes*—date that a LCDFI designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all required documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the LCDFI receives a cash investment of certified capital that is available for investment in Louisiana entrepreneurial businesses.

*Employees*—

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis.

b. The term *employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a Louisiana entrepreneurial business on a contract basis; or

ii. employees of any business that perform services (contractor) for a Louisiana entrepreneurial business.

For example: a contractor may enter into an agreement to perform services for a Louisiana entrepreneurial business. The contractor’s employees that perform services under that agreement would not be employees under this definition.

*Equity Features*—includes [pursuant to R.S. 51:3078(5)(b)] the following:

a. *Royalty Right*—rights to receive a percent of gross or net revenues, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests*—rights to receive a percent of operating or net profits, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership*—options on the stock of the Louisiana entrepreneurial business. The Louisiana entrepreneurial business may repurchase a warrant

(a "call") or the Louisiana entrepreneurial business may be required to sell a warrant (a "put") at some stated amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Right*—conversion options of debt, to convert all or a portion of the debt to the corporate stock of the Louisiana entrepreneurial business, then to participate in the sale of the stock of the Louisiana entrepreneurial business.

e. *Equity Rights*—the receipt or creation of a significant equity interest in a Louisiana entrepreneurial business.

f. And such other conceptually similar rights and elements as the OFI may approve.

*Financing Assistance Provided in Cash and The Investment of Cash*—transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; prepaid debt; loan collection expenses or legal fees incurred by a LCDFI in protecting its collateral interest in an investment.

*Institution Affiliated Party*—a director, officer, employee, agent, controlling person, and other person participating in the affairs of the LCDFI.

*Investment*—

a. at all times, in order to perfect the tax credits earned as a result of an investment described in R.S. 51:3078(3) and (9), or R.S. 51:3079(A) and (B), the LCDFI shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

i. available to be invested in *qualified investments*;

ii. invested in qualified investments made subsequent to the date on which the investment pool transaction closes; or

iii. a combination of §1702.*Investment.a.i* and ii.

b.i. an *investment* furthers economic development within Louisiana if the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the Louisiana entrepreneurial business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 90 percent of the proceeds derived from the investment are used by the Louisiana entrepreneurial business for two or more of the following purposes:

(a). to hire significantly more Louisiana employees;

(b). to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a company buyout;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business. Such future debt financing must be obtained within three months of the *qualified investment* date;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Subclause (d) above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the LCDFI shall request in writing and the commissioner shall issue a written response to the LCDFI that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the LCDFI, and shall be part of the annual review required to be performed by the office and billed according to provisions contained in §1710.A.1. However, upon written notification to the LCDFI, the 30-day review period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a LCDFI in an interim construction project shall not be considered to further economic development within Louisiana unless the same LCDFI also provides the permanent financing.

*Net Income*—net income as defined under or consistent with Generally Accepted Accounting Principles.

*Net Worth*—net worth as defined under or consistent with Generally Accepted Accounting Principles.

*Office*—the Louisiana Office of Financial Institutions (OFI).

*Participation Between LCDFIs*—are loans or other investments in which one or more LCDFIs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a LCDFI may only include its participation (ownership interest) as a qualified investment.

*Permissible Investments*—for purposes of R.S. 51:3081(G), cash deposited with a federally-insured financial institution; certificates of deposit in federally insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under Subsection a.(i) of the definition of

*Investment* in LAC 10:XV.102 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is repayable to the LCDFI within 10 days following demand by the LCDFI in connection with funding a qualified investment.

*Person*—a natural person or legal entity qualified to seek certification as a LCDFI.

*Sophisticated Investor*—any of the following:

a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;

b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual taxable income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

*Total Certified Capital under Management*—for purposes of investment limits, pursuant to R.S. 51:3081(G):

a. GAAP Capital—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of which shall be exchangeable for cash and which is available for investment in qualified investments; undivided profits or losses which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

b. Plus—qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. Less—the following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the LCDFI:

i. The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital.

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

d. The portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:3081(G).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

### §1703. Applications

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:3075 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

1. An application fee as prescribed by LAC 10:XV.1712 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.

2. This Office reserves the right to return the application to the applicant if the fee submitted is incorrect. The application may be resubmitted with the correct fee. The application will not be considered officially received and accepted until the appropriate fee is submitted. Application fees are nonrefundable.

B. The forms for applying to become a LCDFI may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filing shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Applications and all submissions of additional information reported to the office shall be delivered via United States mail, or private or commercial interstate carrier, properly addressed and postmarked, and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. A previously incomplete application may be resubmitted, either in a partial manner or totally, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a LCDFI and/or the office may be subject to civil and/or criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

### §1704. Certification Instructions and Guidelines

A. The application shall contain the following specific information:

1. name of applicant;
2. date of application;
3. address of applicant;
4. Louisiana corporate certification number and certified copies of the articles of incorporation and initial report filed with the Louisiana Secretary of State;
5. a federal tax identification number;
6. phone number, address and zip code;
7. a copy of any bylaws executed by the board of directors;

8. the designation of a correspondent, agent or person responsible for responding to questions relating to the application;

9. a resolution of the board of directors of the applicant corporation authorizing, empowering and directing an officer of the applicant corporation to apply for certification as a LCDFI, and to sign said application;

10. current (less than one year) financial statements for all incorporators and initial directors;

11. description of the LCDFI's business plan, in a narrative form, which shall include, at a minimum, the following:

a. a description of the LCDFI's statement of purpose and organization;

b. types of lending and financing it intends to offer and to whom;

c. whether it intends to provide management assistance, and if so, to what extent and to whom;

d. whether the LCDFI will be a profit or nonprofit corporation;

e. pro forma financial statements for the three consecutive years following the filing of the application, showing future earnings prospects;

f. a proposed net worth structure as required by R.S. 51:3080(B);

12. a list of all of current directors, officers and controlling persons;

13. biographical information concerning the proposed directors, officers and controlling persons, including personal information, résumé of each person's education, their employment record and prior associations or position with other LCDFI's and in what capacity in or out of Louisiana;

14. form granting the commissioner authority to obtain information from outside sources;

15. evidence that the applicant entity has been certified as a Community Development Financial Institution by the United States Department of the Treasury; and

16. other pertinent information as may be required by the commissioner in his sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

### **§1705. Conditions of Certification**

A. All LCDFIs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a Louisiana Community Development Financial Institution and shall certify and acknowledge that the statement is true and correct:

1. The LCDFI has an initial capitalization of not less than \$500,000. If any capitalization is repurchased or contemplated to be repurchased by the LCDFI within five years after certification, the LCDFI will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership

interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the LCDFI will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification.

3. The board of directors/shareholders will not elect new or replace existing board members or declare dividends without prior written consent of the office during the first two years following certification as a LCDFI.

4. The LCDFI will immediately notify the office in writing when its total certified capital under management is not sufficient to enable the LCDFI to operate as a viable going concern.

5. The LCDFI will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The LCDFI will comply with the LCDFI Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The LCDFI will adopt and follow OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant by the commissioner.

B.1. If a LCDFI contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the LCDFI shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office at least 30 calendar days prior to investor solicitation.

2. If a LCDFI seeks to certify capital pursuant to R.S. 51:3078(6)(b), the LCDFI shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow the office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 calendar days prior to a request for certification of capital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

### **§1706. Requirements for Continuance of Certification and Decertification**

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:3081 and decertification of an investment pool under R.S. 51:3082.

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator:

a. no qualified investment may be counted more than once;

b. the date the investment of cash is made determines whether the one-year holding date is achieved. For multiple funding, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.

3. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a LCDFI's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a LCDFI may allocate its qualified investments to all open investment pools, provided such allocations are reasonable as determined by the commissioner.

C.1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

a. a sale that is executed in connection with a sale of control of a Louisiana entrepreneurial business; or

b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the LCDFI may deliver to the Office a letter of credit in form and substance, and issued by a federally insured bank. The letter of credit:

a. shall be payable to the Office as beneficiary;

b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with C.1 above;

c. shall provide that the letter of credit is forfeitable in full if the LCDFI fails to comply with the requirements of C.1 above; and

d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments which are required to be held pursuant to C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of A.1.a above which have not yet been held by the LCDFI a minimum of one year.

3. If the LCDFI provides a letter of credit in accordance with C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the LCDFI as the sole remedy for the failure of the LCDFI to comply with the requirements of C.1 above; otherwise, the failure to

comply with C.1 above shall be considered a violation of R.S. 51:3081(E)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

#### **§1707. Change of Control**

A. In the event of a change of control of a LCDFI, the LCDFI shall provide written notification to the commissioner of the proposed transaction at least 30 days prior to the proposed change of control effective date. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner, provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the LCDFI or the date of the LCDFI's last notification under R.S. 51:3081(F) for whom the Office of Financial Institutions has received a current Biographical and Financial Report and conducted a current background check shall be disregarded;

2. a copy of the proposed business plan of the new owners covering a three year period;

3. a discussion of the previous experience the proposed owner has in the field of venture capital financing;

4. a credit report on each new owner;

5. a listing of any changes to the board of directors and/or of the LCDFI;

6. a copy of any legal documents or agreements relating to the transfer, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

#### **§1708. Information Required from Louisiana Entrepreneurial Businesses**

A. Prior to making a qualified investment in a Louisiana entrepreneurial business, a LCDFI shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the LCDFI in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business. For example: a board resolution or such other appropriate evidence of a grant of necessary authority;

2. a binding waiver of rights and consent agreement sufficient to allow the LCDFI, upon request to the business, full access to all information and documentation of the business which is in any way related to the LCDFI's investment in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow access by the LCDFI of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of the investment proceeds, and that the business will provide to the LCDFI documentation to support the use of proceeds;

5. a statement certifying that the business meets the qualifications of a "Louisiana Entrepreneurial Business" as defined by R.S. 51:2303(5); and

6. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

#### **§1709. General Provisions**

##### **A. Books and Records**

1. A LCDFI shall make and keep its records in conformity with Generally Accepted Accounting Principles.

2. A LCDFI shall make and keep all of its records at its main office as identified in its application for certification or at some other location authorized by prior written approval of the commissioner.

3. All books and records of a LCDFI shall be retained for a period of at least three years following decertification of the LCDFI in accordance with R.S. 51:3082.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

#### **§1710. Directors and Officers**

A. Election of Directors or Managers. At least 30 days prior to the election of any person as the director or manager of a LCDFI, such LCDFI and such director or manager shall file with the commissioner a report containing the following information:

1. name, address and occupation of the proposed director or manager;

2. title of any office which the director or manager previously held with the LCDFI;

3. anticipated election date of the director or manager;

4. manner of election of the director or manager (that is, whether by the board or by the shareholders);

5. in case a director or manager is not an incumbent director or executive officer of the LCDFI, the LCDFI shall provide:

a. a personal financial statement and confidential résumé on a form prescribed by the commissioner, containing the information called for therein, as of a date within 90 days before the filing of the report and signed by the proposed director or manager;

B. Appointment of Executive Officers. At least 30 days prior to the appointment of any person as an executive officer of a LCDFI, such LCDFI and such executive officer(s) shall file with the commissioner a report containing the following information:

1. name and address of the executive officer;

2. title of the office to which the executive officer will be appointed;

3. a summary of the duties of the office to which the executive officer will be appointed;

4. title of any office which the executive officer previously held with the LCDFI and title of any office (other than the office to which the executive officer was will be appointed) which the executive officer currently holds with the LCDFI;

5. the LCDFI shall provide a personal financial statement and confidential résumé on the form prescribed by the commissioner, containing the information called for therein, dated as of a date within 90 days before the filing of the report, and signed by the newly appointed executive officer.

C. Notification. Following approval by the Office, each LCDFI shall provide to the commissioner a written notice stating the effective date of the newly elected/appointed director, manager, or executive officer. Said notice must be received by the Office within 30 days of the stated effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

#### **§1711. Income Tax Credits**

A. Pursuant to R.S. 51:3078(6), an investment for the purposes of earning income tax credits means a transaction that, in substance and in form, is the investment of cash in exchange for either:

1. common stock, preferred stock, or an equivalent ownership interest in a LCDFI; or

2. a loan receivable or note receivable from a LCDFI which has a stated final maturity date of not less than five years from the origination date of the loan or note and is repaid in a manner which results in the loan or note being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the loan or note.

B. In order to be eligible for any income tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a LCDFI voluntarily decertifies and preserves all income tax credits, if debentures, notes or any other quasi-equity/ debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:3082. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

1. No LCDFI certified after December first of any year shall be entitled to receive an allocation pursuant to R.S. 51:3079 for the same calendar year in which it was certified.

2. By December 10th, the commissioner shall review all requests for allocation of income tax credits and notify the LCDFI of the amount of certified capital for which

income tax credits are allowed to the investors in such institution. During this 10 day review period, no investor substitutions will be allowed.

3. If a LCDFI does not receive an investment of certified capital equaling the amount of the allocation made pursuant to R.S. 51:3079 within 10 days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining LCDFIs on a pro rata basis.

#### C. Conditions to Sell or Transfer Income Tax Credits

1. The transfer or sale of income tax credits, pursuant to R.S. 51:3079(A), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirers. Furthermore, even though a transfer or sale of credits may involve several entities, only one election may be made during any calendar quarter. Therefore, an investor in a LCDFI may only transfer or sell credits once during a calendar quarter and the entity that purchases or acquires the credits may not transfer credits obtained during the calendar quarter of purchase. In any subsequent calendar quarter, the purchaser or acquirer of the credits may make one election per calendar quarter, if needed.

2. Companies and/or individuals shall submit to the Louisiana Department of Revenue and Taxation in writing, a notification of any transfer or sale of income tax credits at least 30 days prior to the transfer or sale of such credits. The notification shall include the original investor's income tax credit balance prior to transfer, the projected remaining balance after transfer, all tax identification numbers for both transferor and acquirer, the date of transfer, and the amount transferred.

3. If income tax credits are transferred between affiliates or sophisticated investors (acquirers), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquirer shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquirer;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquirer; and
- c. credits taken by the transferor and each acquirer under R.S. 51:3079(A) and (B).

4. The transfer or sale of income tax credits, pursuant to R.S. 51:3079(A), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:3079(A) and (C), respectively. Any income tax credits transferred or sold, which credits are subject to recapture pursuant to R.S. 51:3082, shall be the liability of the taxpayer that actually claimed the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

#### §1712. Fees and Assessments

A. Pursuant to the authority granted under R.S. 51:3082(A) and 3083(4), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Community Development Financial Institution Act, R.S. 51:3075 et seq.

#### 1. Fees and Assessments

Description	Fee
Application for certification as a LCDFI.	\$2,000
Annual assessment fee of each LCDFI at a floating rate to be assessed no later than May 15th of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.1702, as of the previous December 31st audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the Louisiana community development financial institution act by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the Louisiana community development financial institution act shall be added to the next variable assessment or billed on a pro rata basis.	Variable
Late fee for each calendar day that an assessment fee is late pursuant to the requirements of LAC 10:XV.1712(A)(2).	\$100 per day
Fee for request filed on December 1st of each year for certification of capital pursuant to LSA-R.S. 51:3079 in order obtain an allocation of certified capital.	\$1,000 Non-refundable
Fee for annual review of each LCDFI to determine the company's compliance with statutes and regulations.	\$50 per hour, per examiner, or \$500, whichever is greater.

#### 2. Administration

a. The failure to timely submit a fee with the request for allocation as required in §1712 (A)(4) shall result in the denial of an allocation of certified capital.

b. The assessment described in §1712(A)(2) shall be considered timely if received by the office on or before May 31 of each calendar year. If the office receives an assessment after May 31, it shall not be deemed late if it was postmarked on or before May 31.

c. Unless annual audited financial statements are submitted to the office by April 30th, annual unaudited financial statements shall be submitted no later than May 1. These unaudited financial statements shall then be used to determine the assessment amount provided for in §1712(A)(2). Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31st.

d. If neither an audited nor unaudited financial statement has been received by this office by May 1st, the late fee described in §1712(A)(3) shall be assessed beginning on June 1 until the assessment has been paid in full.

e. If any of the dates prescribed in §1712(B)(2) and §1712(B)(3) with the exception of the April 30th and the December 31st due date for audited financial statements, occurs on an official state holiday, a Saturday, or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

f. The assessment for each Louisiana Community Development Financial Institution, as defined in R.S. 51:3078(9), and described in §1712(A)(3) shall be based on the following formula.

i. The numerator will be the total certified capital under management of the LCDFI as of December 31 of the previous year.

ii. The denominator will be the total certified capital under management for all Louisiana community development financial institutions as of the previous December 31.

3. Severability. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3075 et seq.

HISTORICAL NOTE: Promulgated by the Office of Financial Institutions, LR 32:

John Ducrest, CPA  
Commissioner

0511#002

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Board of Practical Nurse Examiners

Practice and Delegation (LAC 46:XLVII.1601 and 1603)

The Board of Practical Nurse Examiners, in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979, adopts, effective November 4, 2005, this emergency rule related to practical nursing practice and delegation. This emergency rule shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

Hurricanes Katrina and Rita have resulted in the relocation of nursing home residents to unaffected areas of the state and increased the number of occupied nursing home beds in those areas. At the same time, the hurricanes have exacerbated the shortage of licensed practical nurses in the state. This emergency rule action is being taken in order to address these issues.

The Emergency Rule allows for maximum utilization of available health care workers while ensuring that essential health care services are delivered to nursing home residents timely and safely. To that end, this rule provides for the licensed practical nurse to enlist the aid of certified nursing assistants in the administration of oral medications to residents of licensed nursing homes. Under this rule the licensed practical nurse may delegate, to a certified nursing assistant, the part of oral medication administration that involves handing the oral medication to the resident or placing the oral medication in the mouth of the resident, and observing that the resident swallows the medication.

Licensed practical nurses may delegate those tasks that are within their legal scope of practice, but they retain accountability for those tasks. Therefore the rule also provides for the licensed practical nurse to determine when and if it is safe to delegate a task.

## Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part XLVII. Nurses

#### Subpart 1. Practical Nurses

#### Chapter 16. Practice

##### §1601. Scope of Practice

A. The practice of practical nursing, as defined in RS 37:961 et seq. occurs under the direction of a:

1. licensed physician;
2. optometrist;
3. dentist;
4. psychologist; or
5. registered nurse.

B. Practice must be consistent with the practical nurse's education, preparation, knowledge, skill and ability. Practice includes:

1. health maintenance;
2. healthcare promotion;
3. administration of medications and treatments;
4. on the job training;
5. supervising other licensed practical nurses;
6. supervising subordinate personnel;
7. providing patient instruction;
8. and, with additional training, additional specified acts which are authorized by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 32:

##### §1603. Delegation

A. Delegation is defined as transferring, to a competent individual, the authority to perform a selected activity in a selected situation.

B. In certain settings, the practical nurse may delegate selected tasks that are within the scope of their practice, and outlined herein, to specified subordinate personnel. The practical nurse retains accountability for the delegated task.

1. In licensed nursing homes, after the practical nurse has completed all of the required steps in preparing medications for administration, the practical nurse may delegate the following to certified nursing assistants:

- a. handing oral medications to the resident or placing oral medications in the mouth of a resident; and
- b. observing that the resident swallows the oral medications.

2. The practical nurse shall ensure that the delegated task is performed in accordance with safe standards.

C. A task that is delegated to a specified person, shall not be re-delegated by that person to any other individual, person, subordinate personnel, nursing assistant, or nurse.

D. The practical nurse shall not be cajoled, coerced or forced into delegating any task if the practical nurse determines it is inappropriate or unsafe to do so.

E. The practical nurse shall not be subject to disciplinary action by the board for refusal to delegate if the practical nurse determines that delegation of any task compromises patient safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 32:

Claire Doody Glaviano  
Executive Director

0511#066

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Board of Practical Nurse Examiners

Temporary Permits (LAC 46:XLVII.501 and 1705)

The Board of Practical Nurse Examiners, in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979, adopts, effective November 4, 2005, amendments to §501 and §1705. This Emergency Rule shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

Hurricanes Katrina and Rita have exacerbated the shortage of licensed practical nurses in Louisiana. This action is being taken so that the board may act, without delay, to protect the citizens of the state by ensuring that there is a sufficient supply of licensed practical nurses and specifically, that those who are qualified and eligible for licensure by endorsement, are allowed to enter practice immediately.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLVII. Nurses

##### Subpart 1. Practical Nurses

#### Chapter 5. Definitions

##### §501. Terms in the Manual

A. ...

*Temporary Permit*—short term authorization to practice practical nursing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:961 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:193 (April 1977), amended LR 10:337 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 26:2617 (November 2000), amended LR 32:

#### Chapter 17. Licensure

##### §1705. Temporary Permit

A. - C. ...

D. An eight week temporary permit may be issued to applicants for licensure by endorsement upon receipt of all of the following: verification of current licensure, in good standing, from another state or U.S. territory; a notarized sworn statement, by the applicant, that the applicant meets the requirements for licensure in this state and has a negative history for criminal activity, a negative history for chemical dependency, and a negative history for complaints against and/or related to any and all licenses held for any profession in any state or U.S. territory; the required fee. The temporary permit shall be immediately revoked upon receipt of information indicating that the applicant may not qualify for licensure. A temporary permit may not be reissued to any

person, under any circumstances, including reapplication for licensure by endorsement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:199 (April 1977), amended LR 5:65 (March 1979), LR 10:341 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1130 (October 1992), repromulgated LR 18:1263 (November 1992), LR 28:2355 (November 2002), amended LR 32:

Claire Doody Glaviano  
Executive Director

0511#067

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Intermediate Care Facilities for the Mentally Retarded  
Community Homes Licensing—Emergency Preparedness  
(LAC 48:I.51188)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a rule governing licensing requirements for community homes for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 13, Number 4). The Department now proposes to amend the April 20, 1987 Rule to adopt the following provisions governing emergency preparedness requirements for community homes, also known as intermediate care facilities for the mentally retarded (ICFs-MR). This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of community homes that have been evacuated as a result of natural disasters or other emergencies. It is anticipated that the implementation of this emergency rule will increase expenditures for community home licensure surveys by \$1,349,515 for state fiscal year 2005-06.

Effective October 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services adopts the following provisions governing emergency preparedness requirements for community homes.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

##### Subpart 3. Licensing and Certification

#### Chapter 51. Licensing Requirements for Community Homes

##### §51188. Emergency Preparedness

A. The community home, also known as an intermediate care facility for the mentally retarded (ICF-MR), shall have

an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of natural disasters or other emergencies that disrupt the community home's ability to provide care and treatment or threatens the lives or safety of the community home residents. The community home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a natural disaster or other emergency.

B. At a minimum, the community home shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the community home or to another location;
2. the delivery of essential care and services to community home residents, whether the residents are housed off-site or when additional residents are housed in the community home during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the community home or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

C. The community home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The community home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the community home's performance during the planned drill.

D. The community home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F. In the event that a community home evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and sustains damages due to wind, flooding or power outages, the community home shall not be re-opened to accept returning evacuated residents or new admissions until a joint survey has been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section. The purpose of this joint survey is to assure that the community home is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code, staffing requirements and access to the community service infrastructure (i.e., hospitals, emergency transportation [including adequate resources for evacuation], physicians and other professional services, and necessary supplies.

1. If a community home evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and does not sustain damages due to wind, flooding or power outages, the community home may be re-opened.

G.1. Before re-opening at its licensed location, the community home must submit a detailed summary to the

licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before re-opening, the community home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for re-opening, subject to the facility's compliance with any other applicable rules and regulations.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to re-open.

H. If it is necessary for a community home to temporarily relocate beds and/or increase the number of beds in the home as a result of Hurricanes Katrina and/or Rita, the community home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed November 30, 2005 in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in I.1.-2.

I. The permanent relocation of community home beds as a result of a natural disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

1. the new location has either the same number or fewer of the previously licensed beds; and
2. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40: 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible

for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#010

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Intermediate Care Facilities for the Mentally Retarded  
Group Homes Licensing—Emergency Preparedness  
(LAC 48:I.63188)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a rule governing licensing requirements for group homes for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 13, Number 4). The department now proposes to amend the April 20, 1987 rule to adopt the following provisions governing emergency preparedness requirements for group homes, also known as intermediate care facilities for the mentally retarded (ICFs-MR). This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of group homes that have been evacuated as a result of natural disasters or other emergencies. It is anticipated that the implementation of this Emergency Rule will increase expenditures for group home licensure surveys by \$1,319,515 for state fiscal year 2005-06.

Effective October 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing emergency preparedness requirements for group homes.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 63. Licensing Requirements for Group Homes

#### §63188. Emergency Preparedness

A. The group home, also known as an intermediate care facility for the mentally retarded (ICF-MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of natural disasters or other emergencies that disrupt the group home's ability to provide care and treatment or threatens the lives or safety of the group home residents. The group home shall follow and execute its approved emergency preparedness plan in the

event of the occurrence of a natural disaster or other emergency.

B. At a minimum, the group home shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the group home or to another location;

2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the group home during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the group home or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location; and

5. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

C. The group home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The group home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the group home's performance during the planned drill.

D. The group home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F. In the event that a group home evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and sustains damages due to wind, flooding or power outages, the group home shall not be re-opened to accept returning evacuated residents or new admissions until a joint survey has been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section. The purpose of this joint survey is to assure that the group home is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code, staffing requirements and access to the community service infrastructure (i.e., hospitals, emergency transportation [including adequate resources for evacuation], physicians and other professional services, and necessary supplies.

1. If a group home evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and does not sustain damages due to wind, flooding or power outages, the group home may be re-opened.

G.1. Before re-opening at its licensed location, the group home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before re-opening, the group home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for re-opening, subject to the facility's compliance with any other applicable rules and regulations.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to re-open.

H. If it is necessary for a group home to temporarily relocate beds and/or increase in the number of beds in the home as a result of Hurricanes Katrina and/or Rita, the group home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed November 30, 2005 in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in I.1.-2.

I. The permanent relocation of group home beds as a result of a natural disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

1. the new location has either the same number or fewer of the previously licensed beds, and

2. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#011

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Intermediate Care Facilities for the Mentally Retarded Licensing Standards—Disaster Area Restriction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated rules governing licensing requirements for residential homes for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 13, Number 4). The Department now proposes to adopt temporary provisions governing the re-opening of large intermediate care facilities for the mentally retarded (ICFs-MR) located in areas affected by Hurricanes Katrina and/or Rita. A large ICF-MR is defined as a facility licensed to operate 16 or more beds. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of large intermediate care facilities for the mentally retarded that were evacuated as a result of the recent natural disasters. It is anticipated that the implementation of this Emergency Rule will be cost neutral for state fiscal year 2005-06.

#### Emergency Rule

Effective October 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following temporary provisions governing the re-opening of large intermediate care facilities for the mentally retarded (ICFs-MR) located in areas affected by Hurricanes Katrina and/or Rita. A large ICF-MR is defined as a facility licensed to operate 16 or more beds. Large ICFs-MR located in Orleans, St. Bernard, Plaquemines, Cameron and Calcasieu parishes shall not re-open to accept returning evacuated residents or new admissions before November 30, 2005 unless the facility can demonstrate, to the satisfaction of the Department, that the facility can meet the minimum licensing standards in the areas of:

1. structural soundness of the building;
2. compliance with the sanitation code;
3. compliance with staffing requirements; and
4. access to the community service infrastructure such as hospitals, emergency transportation (including adequate resources for evacuation), physicians and other professional services, and necessary supplies.

Past performance of the facility and its contractors in the execution of the facility's emergency preparedness plan shall be considered. The re-opening of large ICFs-MR in these parishes after November 30, 2005 shall be contingent upon

the results of a joint survey conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section to assure that the facility is in compliance with the licensing standards.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#013

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Intermediate Care Facilities for the Mentally Retarded  
Residential Homes Licensing—Emergency Preparedness  
(LAC 48:1.7927)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a rule governing licensing requirements for residential homes for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 13, Number 4). The Department now proposes to amend the April 20, 1987 rule to adopt the following provisions governing emergency preparedness requirements for residential homes, also known as intermediate care facilities for the mentally retarded (ICFs-MR). This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who reside in residential homes that have been evacuated as a result of natural disasters or other emergencies. It is anticipated that the implementation of this emergency rule will increase expenditures for residential home licensure surveys by \$1,349,515 for state fiscal year 2005-06.

Effective October 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services adopts the following provisions governing emergency preparedness requirements for residential homes.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 79. Licensing Requirements for Residential Homes

#### §7927. Core Requirements

A. - G.6. ...

H. Emergency Preparedness

1. The residential home, also known as an intermediate care facility for the mentally retarded (ICFs-MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of natural disasters or other emergencies that disrupt the residential home's ability to provide care and treatment or threatens the lives or safety of the residential home residents. The residential home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a natural disaster or other emergency.

2. At a minimum, the residential home shall have a written plan that describes:

a. the evacuation of residents to a safe place either within the residential home or to another location;

b. the delivery of essential care and services to residential home residents, whether the residents are housed off-site or when additional residents are housed in the residential home during an emergency;

c. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the residential home or at another location;

d. a plan for coordinating transportation services required for evacuating residents to another location; and

e. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

3. The residential home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The residential home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the residential home's performance during the planned drill.

4. The residential home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

5. The plan shall be available to representatives of the Office of the State Fire Marshal.

6. In the event that a residential home evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and sustains damages due to wind, flooding or power outages, the residential home shall not be re-opened to accept returning evacuated residents or new admissions until a joint survey has been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section. The purpose of this joint survey is to assure that the residential home is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code, staffing requirements and access to the community service infrastructure (i.e., hospitals, emergency transportation [including adequate resources for evacuation], physicians and other professional services, and necessary supplies.

a. If a residential home evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and does not sustain damages due to wind, flooding or power outages, the residential home may be re-opened.

7. Before re-opening at its licensed location, the residential home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

8. Before re-opening, the group home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for re-opening, subject to the facility's compliance with any other applicable rules and regulations.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to re-open.

9. If it is necessary for a residential home to temporarily relocate beds and/or increase in the number of beds in the home as a result of Hurricanes Katrina and/or Rita, the residential home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed November 30, 2005 in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in 10.a.-b.

10. The permanent relocation of residential home beds as a result of a natural disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

a. the new location has either the same number or fewer of the previously licensed beds; and

b. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible

for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#012

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Mental Health Rehabilitation Program Medical Necessity Criteria (LAC 50:XV.Chapters 1-7)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule hereby amends LAC 50:XV.Chapters 1-7 in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the revised provisions governing the administration of the Mental Health Rehabilitation Program (*Louisiana Register*, Volume 31, Number 5). The bureau amended by Emergency Rule the May 20, 2005 Rule to adopt revised medical necessity criteria for mental health rehabilitation services and to clarify Medicaid policy governing provision of services in off-site locations and staffing requirements (*Louisiana Register*, Volume 31, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the August 1, 2005 emergency rule. This action is being taken to promote the health and well being of Medicaid recipients who are receiving mental health rehabilitation services by assuring continuity of services during the transition period to the restructured Mental Health Rehabilitation Program.

Effective November 30, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the May 20, 2005 Rule to adopt revised medical necessity criteria for mental health rehabilitation services and to clarify Medicaid policy governing provision of services in off-site locations and staffing requirements.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

##### Subpart 1. Mental Health Rehabilitation

#### Chapter 1. General Provisions

#### §103. Definitions and Acronyms

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*Off-Site Service Delivery Location*—locations of service that are publicly available for, and commonly used by, members of the community other than the MHR provider and site or locations that are directly related to the recipient's

usual environment, or those sites or locations that are utilized in a non-routine manner. This can also include a location used solely for the provision of allowable off-site service delivery by a certified MHR provider.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

### **§105. Prior Authorization**

A. Every mental health rehabilitation service shall be prior authorized by the Bureau or its designee. Services provided without prior authorization will not be considered for reimbursement. There shall be no exceptions to the prior authorization requirement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:

## **Chapter 3. Covered Services and Staffing Requirements**

### **Subchapter A. Service Delivery**

#### **§301. Introduction**

A. - B. ...

C. Children's Services. There shall be family and/or legal guardian involvement throughout the planning and delivery of MHR services for children and adolescents. The agency or individual who has the decision making authority for children and adolescents in State custody must request and approve the provision of MHR services to the recipient. The case manager or person legally authorized to consent to medical care must be involved throughout the planning and delivery of all MHR services and such involvement must be documented in the recipient's record maintained by the MHR agency.

1. The child or adolescent shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

- a. age;
- b. development;
- c. education; and
- d. culture.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:

### **Subchapter B. Mandatory Services**

#### **§311. Assessment**

A. - B.1. ...

2. A licensed mental health professional (LMHP) shall:

- a. have a face-to-face contact with the recipient for the purpose of completing the assessment;
- b. score the LOCUS/CALOCUS if he/she has been approved to be a clinical evaluator by Office of Mental Health (OMH); and
- c. sign and date the assessment.

3. Physical health history, current health status, medication use profile, medication allergies and adverse reactions must be documented to confirm that the

information has been reviewed by the treating psychiatrist in a face-to-face contact with the recipient.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:

### **§317. Community Support**

A. Community support services is the provision of mental health rehabilitation services and supports necessary to assist the recipient in achieving and maintaining rehabilitative, resiliency and recovery goals. The service is designed to meet the educational, vocational, residential, mental health treatment, financial, social and other treatment support needs of the recipient. Community support is the foundation of the recovery-oriented ISRP and is essential to all MHR recipients. Its goal is to increase and maintain competence in normal life activities and to gain the skills necessary to allow recipients to remain in or return to naturally occurring supports. This service includes the following specific goals:

1. achieving the restoration, reinforcement, and enhancement of skills and/or knowledge necessary for the recipient to achieve maximum reduction of his/her psychiatric symptoms;
2. minimizing the effect of mental illness;
3. maximizing the recipient's strengths with regard to the mental illness;
4. increasing the level of the recipient's age-appropriate behavior;
5. increasing the recipient's independent functioning to an appropriate level.
6. enhancing social skills;
7. increasing adaptive behaviors in family, peer relations, school and community settings;
8. maximizing linkage and engagement with other community services, including natural supports and resources;
9. applying decision-making methods in a variety of skill building applications; and
10. training caregivers to address the needs identified in the ISRP using preventive, developmental and therapeutic interventions designed for direct individual activities.

B. - B.3. ...

C. Service Exclusions. This service may not be combined on an ISRP with Parent/Family Intervention (Intensive). Community support is an individualized service and is not billable if delivered in a group setting or with more than one recipient per staff per contact.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

### **§319. Group Counseling**

A. Group counseling is a treatment modality using face-to-face verbal interaction between two to eight recipients. It is a professional therapeutic intervention utilizing psychotherapy theory and techniques. The service is directed to the goals on the approved ISRP.

B.1. - 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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

**§321. Individual Intervention/Supportive Counseling**

A. Individual intervention and supportive counseling are verbal interactions between the counselor therapist and the recipient receiving services that are brief, face-to-face, and structured. Individual intervention (child) and supportive counseling (adult) are services provided to eliminate the psychosocial barriers that impede the skills necessary to function in the community.

A.1. - B.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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

**§325. Psychosocial Skills Training—Group (Youth)**

A. Psychosocial Skills Training—Group (Youth) is a therapeutic, rehabilitative, skill building service for children and adolescents to increase and maintain competence in normal life activities and gain the skills necessary to allow them to remain in or return to their community. It is an organized service based on models incorporating psychosocial interventions.

B. - 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, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

**Subchapter C. Optional Services**

**§335. Parent/Family Intervention (Intensive)**

A. Parent/Family Intervention (Intensive) is a structured service involving the recipient and one or more of his/her family members. It is an intensive family preservation intervention intended to stabilize the living arrangement, promote reunification, or prevent utilization of out of home therapeutic placement (i.e., psychiatric hospitalization, therapeutic foster care) for the recipient. These services focus on the family and are delivered to children and adolescents primarily in their homes. This service is comprehensive and inclusive of certain other rehabilitative services as noted in the "Services Exclusions" sections of those services.

B. - 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, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

**§337. Psychosocial Skills Training—Group (Adult)**

A. Psychosocial Skills Training—Group (Adult) is a therapeutic, rehabilitative, skill building service for individuals to increase and maintain competence in normal life activities and gain the skills necessary to allow them to remain in or return to their community. It is designed to increase the recipient's independent functioning in his/her living environment through the integration of recovery and rehabilitation principles into the daily activities of the recipient. It is an organized program based on a psychosocial rehabilitation philosophy to assist persons with significant psychiatric disabilities, to increase their functioning to live successfully in the natural environments of their choice.

B. - 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, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

**Chapter 5. Medical Necessity Criteria**

**§501. General Provisions**

A. When a recipient requests MHR services, an initial screening must be completed to determine whether the recipient potentially meets the medical necessity criteria for MHR services. If it determined that the recipient potentially meets the criteria for services, an initial assessment shall be completed and fully documented in the recipient's record no later than 30 days after the request for services. Information in an assessment shall be based on current circumstances (within 30 days) and face-to-face interviews with the recipient. If the recipient is a minor, the information shall be obtained from a parent, legal guardian or other person legally authorized to consent to medical care.

B. If it is determined at the initial screening or assessment that a recipient does not meet the medical necessity criteria for services, the provider shall refer the recipient to his/her primary care physician, the nearest community mental health clinic, or other appropriate services with copies of all available medical and social information.

C. In order to qualify for MHR services, a recipient must meet the medical necessity criteria for services outlined in §503 or §505. These medical necessity criteria shall be utilized for authorization and reauthorization requests received on or after August 1, 2005.

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care. MHR providers shall rate recipients on the CALOCUS/LOCUS at 30 day intervals, and these scores and supporting documentation must be submitted to the Bureau or its designee upon request. Ongoing services must be requested every 90 days based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

E. For authorization and reauthorization requests received on or after August 1, 2005, lengths of stay in the MHR Program beyond 270 days (nine months) shall be independently reviewed by the Bureau or its designee for reconsideration of appropriateness, efficacy, and medical necessity for continuation of MHR services.

F. The bureau or its designee reserves the right to require a second opinion evaluation by a licensed mental health professional that is not associated with the MHR provider that is seeking authorization or reauthorization of 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 31:1086 (May 2005), amended LR 32:

**§503. Adult Criteria for Services**

A. In order to qualify for MHR services, Medicaid recipients age 18 or older must meet the following criteria:

1. diagnosis—the recipient must currently have or, at any time during the past year, had a diagnosable mental behavioral or emotional disorder of sufficient duration to

meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) or the *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM); or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness; and

2. disability—in order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, occupational and social functioning as indicated by a score within levels four or five on the LOCUS that can be verified by the Bureau or its designee; and

3. duration—the recipient must have a documented history of severe psychiatric disability which is expected to persist for at least a year and requires intensive mental health services, as indicated by one of the following:

- a. psychiatric hospitalizations of at least six months duration in the last five years (cumulative total); or
- b. two or more hospitalizations for mental disorders in the last 12-month period; or
- c. structured residential care, other than hospitalization, for a duration of at least six months in the last five years; or
- d. documentation indicating a previous history of severe psychiatric disability of at least six months duration in the past year.

NOTE: Recipients who are age 18 and up to 21 and who have been determined not to meet the adult medical necessity criteria for MHR services, initial or continued care, shall be reassessed by the bureau or its designee using the children/adolescent medical necessity criteria for 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 32:

#### **§505. Child/Adolescent Criteria for Services**

A. In order to qualify for MHR services, Medicaid recipients age 17 or younger must meet the following criteria:

1. diagnosis—the recipient must currently have or, at any time during the past year, had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) or the *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM), or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness; and

2. disability—in order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, educational, and social functioning as indicated by a score within levels four or five on the CALOCUS that can be verified by the Bureau or its designee; and

NOTE: Youth returning to community living from structured residential settings or group homes under the authority of the Office of Community Services or the Office of Youth Services may be considered to meet the disability criteria for admission with a level three on the LOCUS or CALOCUS.

3. duration—the recipient must have a documented history of severe psychiatric disability that is expected to persist for at least a year and requires intensive mental health services, as indicated by at least one of the following:

- a. past psychiatric hospitalization(s);
- b. past supported residential care for emotional/behavioral disorder;
- c. past structured day program treatment for emotional/behavioral disorder; or
- d. documentation indicating that an impairment or pattern of inappropriate behaviors has persisted for at least three months and is expected to persist for at least six months.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

#### **§507. Exclusionary Criteria**

A. Mental health rehabilitation services are not considered to be appropriate for recipients whose diagnosis is mental retardation, developmental disability or substance abuse unless they have a co-occurring diagnosis of severe mental illness or emotional/behavioral disorder as specified within DSM-IV-TR or ICD-9-CM, or its subsequent revisions of these documents.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

#### **§509. Discharge Criteria**

A. Discharge planning must be initiated and documented for all recipients at time of admission to MHR services. For those recipients who are receiving MHR services as of July 31, 2005, discharge planning must be initiated and documented prior to the end of the then current 90 day service plan. Discharge from mental health rehabilitation services for current and new recipients shall be initiated if at least one of the following situations occurs:

1. the recipient's treatment plan/ISRP goals and objectives have been substantially met;
2. the recipient meets criteria for a higher level of treatment, care or services requiring admission to a 24-hour care facility for 30 days or more;
3. the recipient, family, guardian, and/or custodian are not engaging in treatment or not following program rules and regulations, despite attempts to address barriers to treatment;
4. consent for treatment has been withdrawn;
5. supportive systems that allow the recipient to be maintained in a less restrictive treatment environment have been arranged; or
6. the recipient receives three successive scores within level three or less on the CALOCUS/LOCUS. If this situation occurs, the provider shall implement a written discharge plan which includes a plan for the arrangement of

services required to transition the recipient to a lower level of care within the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

## **Chapter 7. Provider Participation Requirements**

### **Subchapter A. Certification and Enrollment**

#### **§701. Provider Enrollment Moratorium**

A. ...

1. Exception. MHR providers may be allowed to enroll and obtain a new Medicaid provider number for existing satellite offices. In order to obtain a provider number for a satellite office, the MHR provider must have disclosed the satellite office to DHH before August 20, 2004. The MHR provider must provide clear and convincing proof, in the discretion of the Department, that any listed satellite office or off-site location was operational prior to the moratorium.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:668 (March 2005), amended LR 32:

#### **§703. Application**

A. To be certified or recertified as a mental health rehabilitation provider requires that the provisions of this Subpart 1, the provider manual and the appropriate statutes are met. A prospective provider who elects to provide MHR services shall apply to the Bureau of Health Service Financing or its designee for certification. The prospective provider shall create and maintain documents to substantiate that the provider meets all prerequisites in order to qualify as a Medicaid provider of MHR services.

1. - 10. ...

11. proof of an adult day care license issued by the Department of Social Services or its successor when psychosocial skills training for adults is offered by the MHR provider. All licenses and certificates shall be in the name of the MHR provider and shall contain the provider's correct name and address;

12. - 14. ...

C. The MHR provider shall have a separate Medicaid provider number for each location where it routinely conducts business and provides scheduled services. This does not include those sites or locations that meet the definition of an off-site service delivery location. Satellite offices or off-site locations must have been operational before August 20, 2004 or they will not be allowed to provide MHR services after August 1, 2005.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005), amended LR 32:

#### **§705. Application and Site Reviews**

A. A prospective MHR provider shall undergo one or more reviews by BHSF or its designee before certification:

1. an application review;
2. a first site review; and if necessary
3. a second site review.

B. BHSF or its designee will conduct a review of all application documents for compliance with MHR

requirements. If the documentation is approved, the applicant will be notified and an appointment will be scheduled for a first site review of the prospective MHR provider's physical location. If the first site review is successful, the certification request will be approved and forwarded to Provider Enrollment for further processing.

C. If the application documentation furnished by the prospective MHR provider is not acceptable, a meeting will be scheduled to discuss the deficiencies. The applicant has 30 days to correct the documentation deficiencies and to request a site visit at their physical location.

1. If the prospective MHR provider requests a site visit in a timely manner, a site review of their physical location will be scheduled. At the onsite review, BHSF or its designee will review the corrected documents and make an assessment of the physical location. If the prospective provider has corrected the application document deficiencies and the physical location is deemed acceptable and sufficient to operate as a mental health rehabilitation provider, BHSF or its designee will approve the certification request and forward the necessary paperwork to Provider Enrollment for further processing.

C.2. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:802 (April 2004), amended LR 31:1087 (May 2005) amended LR 32:

### **Subchapter C. Provider Responsibilities**

#### **§731. General Provisions**

A. - A.1 ...

B. The MHR provider shall immediately report any suspected or known violations of any state or federal criminal law to the Bureau.

C. Each MHR provider shall maintain written procedures and implement all required policies and procedures immediately upon acceptance of recipients for services.

D. The MHR provider shall develop a policy and procedure for hospitalization that is in conformity with the single point of entry (SPOE) policy and procedure.

E. The MHR provider shall request an expedited prior authorization review for any recipient whose discharge from a 24 hour care facility is dependent on follow-up mental health services.

F. The MHR provider shall develop a quality improvement procedure (QIP) plan as outlined in the current MHR provider manual. It should address all aspects of the MHR provider operation.

G. If, as a result of a monitoring review, a written notice of deficiencies is given to the MHR provider, the provider shall submit a written corrective action plan to the Bureau within 10 days of receipt of the notice from the Department. If the MHR provider fails to submit a corrective action plan within 10 days from the receipt of the notice, sanctions may be imposed against the MHR provider.

H. The MHR provider must establish regular business office hours for all enrolled office locations. Business office locations must be fully operational at least eight hours a day, five days a week between the hours of 7 a.m. and 7 p.m. This requirement does not apply to off-site service delivery locations. Each office shall contain office equipment and furnishings requisite to providing MHR services including,

but not limited to, computers, facsimile machines, telephones and lockable file cabinets. Offices shall be located in a separate building from the residence of the MHR provider's owner.

1. An office location is fully operational when the provider:

- a. has met all the requirements for and becomes certified to offer mental health rehabilitation services;
- b. has at least five active recipients at the time of any monitoring review, other than the initial application review;
- c. is capable of accepting referrals at any time during regular business hours;
- d. retains adequate staff to assess, process and manage the needs of current recipients;
- e. has the required designated staff on site (at each location) during business hours; and
- f. is immediately available to its recipients and BHSF by telecommunications 24 hours per day.

2. MHR services may be delivered in off site service delivery locations that are:

- a. publicly available for and commonly used by members of the community other than the provider (e.g., libraries, community centers, YMCA, church meeting rooms, etc.);
- b. directly related to the recipient's usual environment (e.g., home, place of work, school); or
- c. utilized in a non-routine manner (e.g., hospital emergency rooms or any other location in which a crisis intervention service is provided during the course of the crisis).

NOTE: Services may not be provided in the home(s) of the MHR provider's owner, employees or agents. Group counseling and psychosocial skills training (adult and youth) services may not be provided in a recipient's home or place of residence.

NOTE: Services may not be provided in the professional practitioner's private office.

3. Every location where services are provided shall be established with the intent to promote growth and development, client confidentiality, and safety.

4. The MHR provider accepts full responsibility to ensure that its office locations meet all applicable federal, state and local licensing requirements. The transferring of licenses and certifications to new locations is strictly prohibited. It is also the responsibility of the MHR provider to immediately notify the Bureau of any office relocation or change of address and to obtain a new certification and license (if applicable).

I. As part of the service planning process, when it is determined that MHR discharge criteria has been met, the MHR provider shall refer the recipient to his/her primary care physician or to the appropriate medically necessary services, and document the referral.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1088 (May 2005) amended LR 32:

### §735. Orientation and Training

A. Orientation and training shall be provided to all employees, volunteers, interns and student workers. This orientation should be comprised of no less than five face-to-

face hours and may be considered as part of the overall requirement of 16 hours orientation.

1. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1089(May 2005) amended LR 32:

### §737. Staffing Qualifications

A. MHR services shall be provided by individuals who meet the following education and experience requirements.

1. Licensed Mental Health Professional (LMHP). A LMHP is a person who has a graduate degree in a mental health-related field from an accredited institution and is licensed to practice in the state of Louisiana by the applicable professional board of examiners. All college degrees must be from a nationally accredited institution of higher education as defined in Section 102(b) of the Higher Education act of 1965, as amended. In order to qualify as a mental health-related field, an academic program must have curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines. The following professionals are considered to be LMHPs.

a. Psychiatrist. Each MHR provider shall implement and maintain a contract with a psychiatrist(s) to provide consultation and/or services on site as medically necessary. The psychiatrist must be a licensed medical doctor (M.D. or D.O.) who is board-certified or board-eligible, authorized to practice psychiatry in Louisiana and enrolled to participate in the Louisiana Medicaid Program. A board eligible psychiatrist may provide psychiatric services to MHR recipients if he/she meets all of the following requirements.

i. The physician must hold an unrestricted license to practice medicine in Louisiana and unrestricted DEA and state and federal controlled substance licenses. If licenses are held in more than one state or jurisdiction, all licenses held by the physician must be documented in the employment record and also be unrestricted.

ii. The physician must have satisfactorily completed a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If training was completed in child and adolescent psychiatry, the training director of the child and adolescent psychiatry program must document the child and adolescent psychiatry training.

NOTE: All documents must be maintained and readily retrieved for review by the Bureau or its designee.

b. Psychologist—an individual who is licensed as a practicing psychologist under the provisions of R.S. 37:2351-2367;

c. Registered Nurse—a nurse who is licensed as a registered nurse or an advanced practice registered nurse in the State of Louisiana by the Board of Nursing. An advanced practice registered nurse, who is a clinical nurse specialist in psychiatry, must operate under an OMH approved collaborative practice agreement with an OMH approved board certified psychiatrist. A registered nurse must:

i. be a graduate of an accredited program in psychiatric nursing and have two years of post-master's supervised experience in the delivery of mental health services; or

ii. have a master's degree in nursing or a master's degree in a mental health-related field and two years of supervised post master's experience in the delivery of mental health services; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

NOTE: Every registered nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

d. Social Worker—an individual who has a master's degree in social work from an accredited school of social work and is a licensed clinical social worker under the provisions of R.S. 37:2701 – 2723.

e. Licensed Professional Counselor—an individual who has a master's degree in a mental health related field, is licensed under the provisions of R.S. 37:1101-1115 and has two years post-masters experience in mental health.

2. Mental Health Professional (MHP). The MHP is an individual who has a master's degree in a mental health-related field, with a minimum of 15 hours of graduate-level course work and/or practicum in applied intervention strategies/methods designed to address behavioral, emotional and mental disorders as a part of, or in addition to, the master's degree.

NOTE: The MHP must be an employee of the MHR provider and work under the supervision of a LMHP.

3. Mental Health Specialist (MHS). The MHS is an individual who meets one or more of the following criteria:

a. a bachelor's degree in a mental health related field; or

b. a bachelor's degree, enrolled in college and pursuing a graduate degree in a mental health-related field, and have completed at least two courses in that identified field; or

c. a high school diploma or a GED, and at least four years experience providing direct services in a mental health, physical health, social services, education or corrections setting.

Note: The MHS must be an employee of the MHR provider and work under the supervision of a LMHP.

4. Nurse. A registered nurse who is licensed by the Louisiana Board of Nursing or a licensed practical nurse who is licensed by the Louisiana Board of Practical Nurse Examiners may provide designated components of medication management services if he/she meets the following requirements.

a. A registered nurse must have:

i. a bachelor's degree in nursing and one year of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; or

ii. an associate degree in nursing and two years of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

b. A licensed practical nurse may perform medication administration if he/she has:

i. one year of experience as a psychiatric nurse which must have occurred no more than five years from the date of employment/contract with the MHR provider; and

ii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to any recipient.

NOTE: Every registered nurse and licensed practical nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1089 (May 2005), amended LR 32:

## **Subchapter D. Records**

### **§757. Personnel Records**

A. A complete personnel records creation and retention policy shall be developed, implemented and maintained by the MHR provider. The MHR provider shall maintain documentation and verification of all relevant information necessary to assess qualifications for all staff, volunteers and consultants. All required licenses as well as professional, educational and work experience must be verified and documented in the employee's or agent's personnel record prior to the individual providing billable Medicaid services. The MHR provider's personnel records shall include the following documentation.

1. Employment Verification. Verification of previous employment shall be obtained and maintained in accordance with the criteria specified in the MHR Provider Manual.

2. Educational Verification. Educational documents, including diplomas, degrees and certified transcripts shall be maintained in the records. Résumés and documentation of qualifications for the psychiatrist and LMHPs, including verification of current licensure and malpractice insurance, must also be maintained in the records.

3. Criminal Background Checks. There shall be documentation verifying that a criminal background check was conducted on all employees prior to employment. If the MHR provider offers services to children and adolescents, it shall have background checks performed as required by R.S. 15:587.1 and R.S. 15:587.3. The MHR provider shall not hire an individual with a record as a sex offender or permit these individuals to work for the provider.

4. Drug Testing. All prospective employees who apply to work shall be subject to a drug test for illegal drug use. The drug test shall be administered after the date of the employment interview and before an offer of employment is made. If a prospective employee tests positive for illegal drug use, the MHR provider shall not hire the individual. The MHR provider shall have a drug testing policy that provides for the random drug testing of employees and a written plan to handle employees who test positive for illegal drug use, whether the usage occurs at work or during off

duty hours. This documentation shall be readily retrievable upon request by the Bureau or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1090 (May 2005), amended LR 32:

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, La 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#060

#### **DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Medical Transportation Program  
Emergency Ambulance Services  
Certification for Ambulance Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to increase the reimbursement paid for designated emergency ambulance procedures by 1.4 percent (*Louisiana Register*, Volume 27, Number 11). The bureau subsequently adopted a Rule which established the provisions governing the medical certification of emergency and non-emergency ambulance services (*Louisiana Register*, Volume 29, Number 11). The bureau promulgated an Emergency Rule effective July 25, 2005 to amend the November 20, 2001 and November 20, 2003 rules governing reimbursement methodology and medical certification of emergency ambulance services. The bureau repealed the July 25, 2005 Emergency Rule and amended the November 20, 2003 Rule to discontinue the requirement for completion of a medical certification form for reimbursement of emergency ambulance services. This emergency rule is being promulgated to continue provisions contained in the August 3, 2005 Emergency Rule. This action is being taken to assure continued access to emergency ambulance services for Medicaid recipients by encouraging the continued

participation of ambulance services providers in the Medicaid Program.

#### **Emergency Rule**

Effective for dates of service on or after December 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing discontinues the requirement for completion of the medical transportation certification form for reimbursement of emergency ambulance services. In order to submit a claim for Medicaid reimbursement, the emergency ambulance trip must meet the definition of emergency response as defined by the Centers for Medicare and Medicaid Services. All claims for emergency ambulance services are subject to post pay review.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#059

#### **DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office the Secretary  
Bureau of Health Services Financing**

Nursing Facilities—Licensing Standards  
Disaster Area Restriction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing homes (*Louisiana Register*, Volume 24, Number 1). The Department now proposes to adopt temporary provisions governing the re-opening of nursing facilities located in areas affected by Hurricanes Katrina and/or Rita. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of nursing facilities that were evacuated as a result of the recent natural disasters. It is anticipated that the implementation of this Emergency Rule will be cost neutral for state fiscal year 2005-06.

#### **Emergency Rule**

Effective October 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing adopts the following temporary provisions governing the re-opening of nursing facilities located in areas affected by Hurricanes Katrina and/or Rita. Nursing facilities located in Orleans, St. Bernard, Plaquemines, Cameron and Calcasieu parishes shall not re-open to accept returning evacuated residents or new admissions before November 30, 2005 unless the facility can demonstrate, to the satisfaction of the Department, that the facility can meet the minimum licensing standards in the areas of:

1. structural soundness of the building;
2. compliance with the sanitation code;
3. compliance with staffing requirements; and
4. access to the community service infrastructure such

as hospitals, emergency transportation (including adequate resources for evacuation), physicians and other professional services, and necessary supplies.

Past performance of the facility and its contractors in the execution of the nursing facility's emergency preparedness plan shall be considered. The re-opening of nursing facilities in these parishes after November 30, 2005 shall be contingent upon the results of a joint survey conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section to assure that the facility is in compliance with the licensing standards.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#008

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing**

#### **Nursing Facility Minimum Licensing Standards Emergency Preparedness (LAC 48:I.9729)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.9729 as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a rule to adopt minimum licensing standards for nursing homes (*Louisiana Register*, Volume 24, Number 1). The Department now proposes to amend the January 20, 1998 rule to revise the provisions governing emergency preparedness requirements for nursing facilities. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of nursing facilities that have been evacuated as a result of natural

disasters or other emergencies. It is anticipated that the implementation of this Emergency Rule will increase expenditures for nursing facility licensure surveys by \$670,104 for state fiscal year 2005-06.

Effective October 18, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the January 20, 1998 Rule governing emergency preparedness requirements for nursing facilities.

### **Title 48**

## **PUBLIC HEALTH—GENERAL**

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

#### **Subpart 3. Licensing**

### **Chapter 97. Nursing Homes**

#### **Subchapter B. Organization and General Services**

#### **§9729. Emergency Preparedness**

A. The nursing facility shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of natural disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a natural disaster or other emergency.

B. As a minimum, the nursing facility shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the nursing facility or to another location;
2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the nursing facility during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. the procedures to notify the resident's family or responsible representative if the resident is evacuated to another location.

C. The nursing facility's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the nursing facility's performance during the planned drill.

D. The nursing facility's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F. In the event that a nursing facility evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and sustains damages due to wind, flooding or power outages, the nursing facility shall not be re-opened to accept returning evacuated residents or new admissions until a joint survey has been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards

Section. The purpose of this joint survey is to assure that the facility is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code, staffing requirements, and access to the community service infrastructure (i.e., hospitals, emergency transportation [including adequate resources for evacuation], physicians and other professional services, and necessary supplies).

1. If a nursing facility evacuates as a result of an evacuation order issued by the parish OEP, or temporarily relocates or temporarily ceases operation at its licensed location and does not sustain damages due to wind, flooding or power outages, the nursing facility may be re-opened.

G.1. Before re-opening at its licensed location, the nursing facility must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before re-opening, the nursing facility must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for re-opening, subject to the facility's compliance with any other applicable rules and regulations.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to re-open.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.3-40:2009.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:49 (January 1998), amended LR 31:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#009

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

#### Professional Services Program—Physician Services Supplemental Payment

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Healthcare Common Procedure Code System. Reimbursement for these services is a flat fee established by the bureau less the amount which any third party coverage would pay. The bureau promulgated an Emergency Rule to provide a supplemental payment for services provided by physicians or other eligible professional service practitioners in qualifying essential state-owned or operated physician practice plans organized by or under the control of a state academic health system or other state entity (*Louisiana Register*, Volume 31, Number 4). The supplemental payment will bring the Medicaid rate for services provided by these physicians/practitioners up to the rate paid by commercial insurers for the same service. To qualify for this supplemental payment, the practice plans must have entered into an agreement to provide the community rate data necessary for satisfactorily calculating the supplemental payments to Medicaid on an annual basis. This Emergency Rule is being promulgated to continue provisions contained in the April 1, 2005 Rule. This action is being taken to enhance federal revenue.

#### Emergency Rule

Effective for dates of service on or after November 28, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will provide supplemental Medicaid payments for qualifying essential state-owned or operated physician practice plans organized by or under the control of a state academic health system or other state entity.

A. In order to qualify to receive supplemental payments, physicians and other eligible professional service practitioners must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. employed by a state-owned or operated entity, such as state-operated hospital or other state entity, including a state academic health system, which:
  - a. has been designated by the bureau as an essential provider; and

b. has furnished satisfactory data to DHH regarding the commercial insurance payments made to its employed physicians and other professional service practitioners.

B. The supplemental payment to each qualifying physician or other eligible professional services practitioner in the practice plan will equal the difference between the Medicaid payments otherwise made to these qualifying providers for professional services and the average amount that would have been paid at the equivalent community rate. The community rate is defined as the average amount that would have been paid by commercial insurers for the same services.

C. The supplemental payments shall be calculated by applying a conversion factor to actual charges for claims paid during a quarter for Medicaid services provided by the state-owned or operated practice plan providers. The commercial payments and respective charges shall be obtained for the state fiscal year preceding the reimbursement year. If this data is not provided satisfactorily to DHH, the default conversion factor shall equal "1." This conversion factor shall be established annually for qualifying physicians/practitioners by:

1. determining the amount that private commercial insurance companies paid for commercial claims submitted by the state-owned or operated practice plan or entity; and
2. dividing that amount by the respective charges for these payers.

D. The actual charges for paid Medicaid services shall be multiplied by the conversion factor to determine the maximum allowable Medicaid reimbursement. For eligible non physician practitioners, the maximum allowable Medicaid reimbursement shall be limited to 80 percent of this amount.

E. The actual base Medicaid payments to the qualifying physicians/practitioners employed by a state-owned or operated entity shall then be subtracted from the maximum Medicaid reimbursable amount to determine the supplemental payment amount.

F. The supplemental payment for services provided by the qualifying state-owned or operated physician practice plan will be implemented through a quarterly supplemental payment to providers, based on specific Medicaid paid claim data.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.  
Secretary

0511#061

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

#### Rule 15—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Katrina (LAC XI.2737-2745)

Emergency Rule 15 was issued on September 20, 2005 and is retroactive to 12:01 a.m. on August 26, 2005. As justification for the action taken pursuant to this amendment, J. Robert Wooley, Commissioner of Insurance ("Commissioner"), hereby reiterates, reaffirms and readopts all of the sections and provisions set forth in original Emergency Rule 15 by reference as if set forth herein *in extenso*.

The commissioner has determined that Emergency Rule 15 has had the desired effect of providing sufficient time for insureds in Louisiana to protect their insurance needs, make claims for a covered loss under the insurance policy and/or take sufficient action to begin the process to return to normalcy in the post-Katrina era. Additionally, the commissioner has determined that the viability of the insurance industry and the ability of Louisiana insureds to continue to obtain affordable insurance for all the various types of insurance necessary to maintain a healthy economy may be negatively impacted if Emergency Rule 15 is not terminated at some reasonable dates in the near future.

Accordingly, the commissioner has determined, pursuant to the grants of authority set forth in the original Emergency Rule 15, that it is appropriate to set dates for the systematic and methodical termination of Emergency Rule 15. Additionally, the commissioner has determined that it is proper to distinguish between the types of insurance that may still need to be extended to insureds as well as to distinguish between those insureds located in the primary parishes that may still need some additional time to handle their insurance needs. Finally, the commissioner has determined that it is appropriate to delineate between the types of insurance for which no further extension of time is needed by insureds as well as to delineate between the category of insureds located in those primary parishes that have had sufficient time to determine their insurance needs, handle any claims for covered losses and/or make premium payments with regard their insurance matters.

In light of this, Emergency Rule 15 is hereby amended to provide various termination dates for various types of insurance and to provide for termination dates with regard to those insureds located in both the primary and secondary parishes as defined in Emergency Rule 15. To facilitate cross referencing, this amendment will set forth both the Section of Emergency Rule 15 as issued by the commissioner and the Section of the Emergency Rule 15 as published by the Office of the State Register. This Declaration of Emergency was adopted on November 1, 2005.

**Title 37**  
**INSURANCE**  
**Part XI. Rules**

**Chapter 27. Rule 15—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused By Hurricane Katrina**

**§2737. Affirmation of Emergency Rule 15 and Amendment**

A. Emergency Rule 15 was previously adopted by the commissioner on September 20, 2005, retroactive to 12:01 a.m. on August 26, 2005. In furtherance of the power vested in the commissioner and the jurisdiction of the commissioner over all matters related to insurance that were affected by Hurricane Katrina and/or its aftermath the commissioner hereby amends Emergency Rule 15 to adopt new sections and provisions and to set forth dates for the termination of Emergency Rule 15.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§2739. Termination**

A. Emergency Rule 15 shall terminate for the category of insureds and for the types of insurance set forth herein on the dates established below.

1. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 15 shall terminate with regards to any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medical supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance for the following category of insureds:

a. any person who previously met the definition of §2701.A.1 of Emergency Rule 15 who resided in one of the following seven primary parishes: Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa and Washington;

b. any person who previously met the definition of §2701.A.2 of Emergency Rule 15;

c. any person who previously met the definition of §2701.A.3 of Emergency Rule 15 and who resided in one of the following seven secondary parishes: Lafourche, Livingston, St. Charles, St. James, St. John the Baptist, St. Mary and Terrebonne;

d. any person who previously was extended protection pursuant to §2701.A.4 of Emergency Rule 15.

2. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 15 shall terminate for all types of insurance enumerated in §2703 of Emergency Rule 15 for the following category of insureds:

a. any person who previously met the definition of §2701.A.1 of Emergency Rule 15 who resided in one of the following three primary parishes: Jefferson, Tangipahoa and Washington;

b. any person who previously met the definition of §2701.A.2 of Emergency Rule 15;

c. any person who previously met the definition of §2701.A.3 of Emergency Rule 15 and who resided in one of the following seven secondary parishes: Lafourche, Livingston, St. Charles, St. James, St. John the Baptist, St. Mary and Terrebonne;

d. any person who previously was extended protection pursuant to §2701.A.4 of Emergency Rule 15.

3. Effective at 12:00 a.m. (midnight) on December 31, 2005, if not previously terminated herein pursuant to §2739.A.1 or §2739.A.2, Emergency Rule 15 shall terminate for all remaining types of insurance enumerated in §2703 of Emergency Rule 15 for the following category of insureds:

a. any person who previously met the definition of §2701.A.1 of Emergency Rule 15 who resided in one of the following four primary parishes: Orleans, Plaquemines, St. Bernard and St. Tammany.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§2741. Nonrenewal, Nonreinstatement and Premium Increase**

A. The commissioner reiterates that, except as provided for in §2715 of Emergency Rule 15, the nonrenewal or nonreinstatement of any and all types of insurance enumerated in §2703 of Emergency Rule 15 and in §3101.B of Emergency Rule 17, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 is hereby suspended and shall be deferred until January 1, 2006 for those insureds who are current with their premium payments.

B. The commissioner reiterates that any rate increase that may be applicable to any and all types of insurance enumerated in §2703 of Emergency Rule 15 and in §3101.B of Emergency Rule 17, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 shall be deferred until January 1, 2006, and said insurance shall continue in full force and effect until January 1, 2006 at the previously established premium for those insureds who are current with their premium payments.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§2743. Continuing Jurisdiction**

A. The commissioner hereby retains the right of continuing jurisdiction over all sections and provisions set forth Emergency Rule 15, as originally adopted and/or as amended, after the termination of Emergency Rule 15 for purposes of interpretation, enforcement and any and all other regulatory action.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§2745. Severability Clause**

A. If any section or provision of Emergency Rule 15, as originally adopted and/or as amended, is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 15, as originally adopted and/or as amended, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

J. Robert Wooley  
Commissioner

0511#049

**DECLARATION OF EMERGENCY**

**Department of Insurance  
Office of the Commissioner**

Rule 17—Suspension of Certain Statutes and Regulations  
Regarding Health Insurance and Related Provisions  
Regarding Any and All Health Insurance Matters Affecting  
Insureds in Louisiana Caused by Hurricane Katrina  
(LAC 37:XI.3147-3167)

Emergency Rule 17 was issued on September 20, 2005 and is retroactive to 12:01 a.m. on August 26, 2005. As justification for the action taken pursuant to this amendment, J. Robert Wooley, Commissioner of Insurance ("Commissioner"), hereby terminates certain sections and provisions set forth in original Emergency Rule 17 by reference as if set forth herein *in extenso*.

The commissioner has determined that Emergency Rule 17 has had the desired effect of providing sufficient time for insureds in Louisiana to protect their health insurance needs, obtain the services of a health care provider or health care professional, file for health insurance benefits for covered claims under their health insurance policy and/or take sufficient action to begin the process to return to normalcy in the post-Katrina era. Additionally, the commissioner has determined that the viability of the health insurance industry as well as the viability of the health care providers and health care professionals may be negatively impacted if Emergency Rule 17 is not terminated at some reasonable date in the near future.

Accordingly, the commissioner has determined, pursuant to the grants of authority set forth in the original Emergency Rule 17, that it is appropriate to set dates for the termination of Emergency Rule 17. Additionally, the commissioner has determined that it is proper to distinguish between those health insurance policies where the premium has been paid as compared to those where the premium has not been paid. Also, the commissioner has determined that it is proper to distinguish between those health care providers and/or health care professionals who rendered services within and/or who operate businesses within the seven primary parishes affected by Hurricane Katrina and/or its aftermath. Lastly, recognizing that insureds/persons face numerous obstacles

with regard to their health insurance coverage the commissioner has determined it is necessary to take action to minimize the possibility that insureds/persons may lose their health insurance due to their inability to adhere to certain pre-established time frames under the Health Insurance Portability and Accountability Act (hereinafter HIPAA) and/or certain notice time frames under the Consolidated Omnibus Budget Reconciliation Act (hereinafter COBRA).

In light of this, Emergency Rule 17 is hereby amended to provide various termination dates for the various types of health insurance and to provide for termination dates with regard to those insureds/persons located in both the primary and secondary parishes as defined in Emergency Rule 17 and to provide for the payment of claims to health care providers and health care professionals who rendered health care to insureds/persons during the time when Emergency Rule 17 is in effect. To facilitate cross referencing, this amendment will set forth both the Section of Emergency Rule 17 as issued by the commissioner and the Section of the Emergency Rule 17 as published by the Office of the State Register. This Declaration of Emergency was adopted on November 1, 2005.

**Title 37  
INSURANCE  
Part XI. Rules**

**Chapter 31. Rule 17—Suspension of Certain Statutes and Regulations Regarding Health Insurance and Related Provisions Regarding Any and All Health Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Katrina**

**§3147. Affirmation of Emergency 17 and Amendment**

A. Emergency Rule 17 was previously adopted by the commissioner on September 20, 2005, retroactive to 12:01 a.m. on August 26, 2005. In furtherance of the power vested in the commissioner and the jurisdiction of the commissioner over all matters related to insurance that were affected by Hurricane Katrina and/or its aftermath, the commissioner hereby amends Emergency Rule 17 to adopt new sections and provisions and to set forth dates for the termination of Emergency Rule 17.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3149. Termination**

A. Emergency Rule 17 shall terminate for the category of insureds/persons and for the types of insurance set forth herein on the dates established below.

1. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 17 shall terminate with regards to any and all types of health insurance enumerated in Emergency Rule 17, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medical supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, TPAs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance for the following category of insureds:

a. any person who previously met the definition of §3101.A.1 of Emergency Rule 17 who resided in one of the following seven primary parishes: Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa and Washington;

b. any person who previously met the definition of §3101.A.2 of Emergency Rule 17;

c. any person who previously met the definition of §3101.A.3 of Emergency Rule 15 and who resided in one of the following seven secondary parishes: Lafourche, Livingston, St. Charles, St. James, St. John the Baptist, St. Mary and Terrebonne;

d. any person who previously was extended protection pursuant to §3101.A.4 of Emergency Rule 17.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3151. Retention of Certain Provisions of Emergency Rule 17**

A. The commissioner does not terminate the following sections of Emergency Rule 17 and these sections shall remain in effect until the Emergency Rules expires 120 days from the date of adoption, unless otherwise extended by the commissioner:

1. Section 3121.A, Medicare Supplement Premiums, which states the following:

"The commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to R.S. 22:224.K.

In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods during this State of Emergency or any subsequent State of Emergency including, but not be limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods."

2. Section 3125.A, Claim Caused by Hurricane Katrina, which states the following:

"Emergency Rule 17 shall not relieve an insured who has a claim caused by Hurricane Katrina, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim."

3. Section 3137.A, Purpose, which states the following:

"The provisions of Emergency Rule 17 shall be liberally construed to effectuate the intent and purpose expressed herein and to afford maximum consumer protection for the insureds of Louisiana."

4. Section 3139.A, Enforcement and Penalties, which states the following:

"The commissioner retains the sole authority to enforce violations of Emergency Rule 17. Accordingly, any insurer, HMOs, PPOs and MCOs, or other entity doing business in Louisiana and/or regulated by the commissioner

who violates any provision of Emergency Rule 17 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, R.S.22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in LSA R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000.00 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 17, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license.

Additionally, R.S. 22:1220, which, among other things, imposes the obligation of good faith and fairdealing shall also be subject to the sole enforcement authority of the commissioner. That law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 17. Finally, the commissioner reserves the sole right to make the determination regarding whether any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 17."

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3153. Health Insurance Portability and Accountability Act ("HIPAA") Provisions and Time Frames**

A. The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage.

B. Also, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption.

C. The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage for loss of employer contributions) to be eligible for special enrollment.

D. The HIPAA certification rules prescribe time periods for the provision of certificates of creditable coverage upon loss of coverage. Under the regulations, plans and issuers subject to COBRA continuation coverage provisions are required to provide an automatic certificate no later than the time for providing a COBRA election notice. Plans and issuers not subject to COBRA are required to provide the automatic certificate within a reasonable time after coverage ceases.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3155. Adoption of Extended Time Frames for HIPAA**

A. The commissioner hereby incorporates by reference all provisions of 70 Fed. Reg. 55500-55502 and 59620 that relate to time frames under the Health Insurance Portability and Accountability Act ("HIPAA") and 70 Fed. Reg. 55500-55502 and 59620 with regard to times frames under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), as if set forth herein *in extenso*.

B. With respect to insureds/persons, health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities must disregard the period from August 26, 2005 through February 28, 2006 when determining any of the following time periods and dates for group and individual health insurance coverage:

1. the 63-day break in coverage period;
2. the 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children;
3. the 30-day period to request special enrollment.

C. The provisions of LSA - R.S. 22:215.6 (entitled Part VI. Health and Accident Insurance) and any and all provisions in R.S. 22:250.1 et seq. (entitled Part VI-C. Assuring Portability, Availability and Renewability of Health Insurance Coverage) shall be in conformity with any and all extension of timeframes set forth in 29 CFR Part 54 and 29 CFR 2560 and 2590.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3157. Consolidated Omnibus Budget Reconciliation Act ("COBRA") Provisions and Timeframes**

A. The COBRA continuation coverage provisions generally provide insureds/persons a period of at least 60 days to elect COBRA continuation coverage under a group health plan. See ERISA section 605 and Code section 4980B(f)(5).

B. Plans are required to allow payers to pay premiums in monthly installments and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. ERISA section 602(3) and Code section 4980B(f)(2)(C). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day in the period for which payment is being made. See ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii), 26 CFR 54.4980B-8 Q&A-5(a).

C. Notice provisions prescribe time periods for individuals to notify the plan of a qualifying event or determination of disability and for plans to notify insureds/persons of their rights to elect COBRA continuation coverage. See ERISA section 606 and Code section 4980B(f)(6), 29 CFR 2590.606-3.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3159. Adoption of Extended Time Frames for COBRA**

A. The commissioner hereby incorporates by reference all provisions of 70 Fed. Reg. 55500-55502 and 59620 with regard to times frames pursuant to COBRA as if set forth herein *in extenso*.

B. With respect to insureds/persons health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities must disregard the period from August 26, 2005 through February 28, 2006 when determining any of the following time periods and dates for group health insurance coverage:

1. the 60 day period to elect COBRA continuation coverage under ERISA Section 605 and Code section 4980B(f)(5);

2. the date for making COBRA premium payments pursuant to ERISA Section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C);

3. the date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6);

C. Section 3129 of Emergency Rule 17 in reference to R.S. 22:215.13 (entitled Part VI. Health and Accident Insurance) is hereby amended to be in conformity with any and all extension of timeframes set forth in 29 CFR Part 54, 29 CFR 2560 and 2590.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3161. Extended Time Frames for State Continuation**

A. The commissioner hereby suspends R.S. 22:215.13 for group health insurance election time frames to allow insureds/persons additional time to elect group health insurance continuation. The commissioner hereby extends the time frames to February 28, 2006 in order to ensure consistency with the federal guidelines issued in 29 CFR 2560, 2590 and 26 CFR 54.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

### **§3163. Nonrenewal, Nonreinstatement and Premium Increase**

A. The commissioner reiterates that, except as provided for in §2715 of Emergency Rule 15, the nonrenewal or nonreinstatement of any and all types of insurance enumerated in §2703 of Emergency Rule 15 and in §3101.B of Emergency Rule 17, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 is hereby suspended and shall be deferred until January 1, 2006 for those insureds who are current with their premium payments.

B. The commissioner reiterates that any rate increase that may be applicable to any and all types of insurance enumerated in §2703 of Emergency Rule 15 and in §3101.B of Emergency Rule 17, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 shall be deferred until January 1, 2006, and said insurance shall continue in full force and effect until January 1, 2006 at the previously established premium for those insureds who are current with their premium payments.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3165. Continuing Jurisdiction**

A. The commissioner hereby retains the right of continuing jurisdiction over all sections and provisions set forth Emergency Rule 17, as originally adopted and/or as amended, after the termination of Emergency Rule 17 for purposes of interpretation, enforcement and any and all other regulatory action.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3167. Severability Clause**

A. If any section or provision of Emergency Rule 17, as originally adopted and/or as amended, is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 17, as originally adopted and/or as amended, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

J. Robert Wooley  
Commissioner

0511#050

**DECLARATION OF EMERGENCY**

**Department of Insurance  
Office of the Commissioner**

Rule 19—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Rita (LAC 37:XI.Chapter 35)

Emergency Rule 19 is issued pursuant to the plenary authority of the Commissioner of Insurance for the state of Louisiana, including, but not limited to, the following: Proclamation No. 53 KBB 2005 issued on September 20, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency; Executive Order No. KBB 2005 - 70 issued October 24, 2005 by Governor Kathleen Babineaux Blanco transferring authority over any and all insurance matters to Commissioner of Insurance J. Robert Wooley (Commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

On September 20, 2005, Governor Kathleen Babineaux Blanco declared the existence of a State of Emergency within the state of Louisiana caused by Hurricane Rita. This State of Emergency extended from Tuesday, September 20, 2005 through Thursday, October 20, 2005 and has been further extended from Thursday, October 20, 2005 through Saturday, November 19, 2005.

Thousands of Louisiana citizens have suffered damages due to Hurricane Rita. In some places, it could be months before electricity is restored. The homes of many Louisiana citizens were destroyed precluding habitation and the delivery of mail. This disruption has affected the ability of these citizens to pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance related matters. Hurricane Rita has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The commissioner will be hindered in the proper performance of the duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of insurance subject to the Louisiana Insurance Code.

In light of this, Emergency Rule 19 is issued and shall apply to all insurers, HMOs, health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the Commissioner, including any entity enumerated in Emergency Rule 20, regarding any and all types of insurance, including, but not limited to, flood insurance, homeowners insurance, life insurance, health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance, marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, reciprocal insurance and any and all other insurance related entities licensed by the Commissioner or doing business in Louisiana.

Emergency Rule 19 is applicable to insureds, as defined in §3501.A.1, from the following three primary parishes: Calcasieu, Cameron and Vermilion. Emergency Rule 19 is also applicable to insureds, as defined in §3501.A.3, from the following nine secondary parishes: Acadia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary and Terrebonne. The zip codes applicable to the three primary parishes include, but may not be limited to, the list identified as "Hurricane Rita Three Primary Parish Zip Code List" found on the official Louisiana Department of Insurance web site at <http://www.ldi.state.la.us>. The zip codes applicable to the nine secondary parishes include, but may not be limited to, the list identified as "Hurricane Rita Nine Secondary Parish Zip Code List" found on the official Louisiana Department of Insurance web site at <http://www.ldi.state.la.us>. Insureds shall include, but not be limited to, any and all policyholders, members, subscribers and certificate holders.

In the ordinary course of business, insurers, HMOs, health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the Commissioner and other entities send notices to insureds, many of which are required by statute, giving the insured certain limited periods of time within which to pay premiums or otherwise respond. Hurricane Rita and its aftermath have produced a disruption in the notification process because of the inability of insureds to receive mail due to mandatory evacuations and/or the destruction of their homes. Thus, many of Hurricane Rita's victims are currently unable to timely act or respond to such notices or to pay insurance premiums and need additional time within which to act or respond. Some insurers, HMOs, health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the Commissioner and other entities may attempt to cancel, nonrenew or not reinstate such insurance policies. Additionally, some insureds with policies in force as of 12:01 a.m. on September 20, 2005, who wish to make timely payment, are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or potentially uninsured. Emergency Rule 19 provides emergency relief to the insureds of Louisiana affected by Hurricane Rita and/or its aftermath so that they will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on September 20, 2005.

#### **Title 37**

#### **INSURANCE**

#### **PART XI. Rules**

### **Chapter 35. Emergency Rule 19—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Rita**

#### **§3501. Benefits, Entitlements and Protections**

A. The benefits, entitlements and protections of Emergency Rule 19 shall be applicable to insureds who, as of 12:01 a.m. on September 20, 2005 had a policy or contract for any of the types of insurance enumerated in §3503, and meet one of the following criteria:

1. any person who, as of September 20, 2005, resided in one of the following three primary parishes: Calcasieu, Cameron and Vermilion. The zip code for these three primary parishes is on the list identified as "Hurricane Rita Three Primary Parish Zip Code List" found on the official Louisiana Department of Insurance web site at <http://www.lidi.state.la.us>;

2. any person whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one of the three primary parishes enumerated in §3501.A.1 shall be eligible to be defined as an insured if said person verifies such employment status by written documentation to his insurer. No insurer shall unreasonably withhold eligibility to an insured upon receipt of such written documentation;

3. any person who, as of September 20, 2005, resided in one of the following nine secondary parishes: Acadia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary and Terrebonne. However any such person shall only be eligible to be defined as an insured if said person obtains written documentation from either the Chief Executive Officer of the applicable parish of the person or the United States Postal Service that said person incurred an interruption of mail service after September 20, 2005. The zip code for these nine secondary parishes is on the list identified as "Hurricane Rita Nine Secondary Parish Zip Code List" found on the official Louisiana Department of Insurance internet web site at <http://www.lidi.state.la.us>;

4. nothing in Emergency Rule 19 shall preclude an insurer from voluntarily applying the provisions of Emergency Rule 19 relating to cancellation, nonrenewal and nonreinstatement to any other person who is an insured and who resides in any parish other than the parishes set forth in §3501.A.1 or 3.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3503. Application**

A. Emergency Rule 19 shall apply to any and all types of insurance, including, but not limited to, flood insurance, homeowners insurance, life insurance, health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance, marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, disability insurance, reciprocal insurance and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana.

B. Any statutory or regulatory provision, or any policy provision contained in any and all policies of insurance set forth in §3503 above, shall be suspended to the extent that said statutory or regulatory provision, or policy provision, imposed upon an insured a time limit to perform any act or transmit information or funds with respect to any insurance enumerated in §3503 above, which act or transmittal was to have been performed on or after 12:01 a.m. on September 20, 2005. The time limit for any such performance, act or transmittal shall be suspended during the term of the present State of Emergency, and any subsequent State of Emergency declared thereafter, with regard to Hurricane Rita or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3505. Cancellation, Nonrenewal and Nonreinstatement**

A. Emergency Rule 19 hereby suspends any notice of cancellation, notice of nonrenewal, nonreinstatement or any

other notice related to any of the types of insurance enumerated in §3503 that was in force and effect at 12:01 a.m. on September 20, 2005, and any such action shall be null and void and have no force or effect. Furthermore, any such notice shall be reissued *de novo* to the insured in accordance with existing statutory requirements after the expiration of the present State of Emergency, or any subsequent State of Emergency, related to Hurricane Rita and/or its aftermath has been lifted by Governor Kathleen Babineaux Blanco.

B. Any and all provisions in the Louisiana Insurance Code relative to providing for a premium finance company to act on behalf of and/or as agent for an insurance company are hereby suspended. In furtherance thereof, the right, entitlement, legal provision or any other form of legal authority, including any policy provision, of any and all insurers to send a notice of cancellation is suspended effective 12:01 a.m. on September 20, 2005 and shall remain suspended during the State of Emergency related to Hurricane Rita and/or its aftermath. Emergency Rule 19 hereby suspends the right of any insurer to utilize the services of a premium finance company to issue any such notice to any insured.

C. No policy shall be cancelled or nonrenewed solely because of a claim resulting from Hurricane Rita and/or its aftermath.

D. Except as provided for in §3515, the cancellation of any and all types of insurance enumerated in §3503, including, but not limited to, flood insurance, homeowners insurance, life insurance, health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance, marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, disability insurance, reciprocal insurance and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana, is hereby suspended and shall not be allowed until the State of Emergency declared by Governor Kathleen Babineaux Blanco with regard to Hurricane Rita and/or its aftermath has been lifted.

E. Except as provided for in §3515 the nonrenewal or nonreinstatement of any and all types of insurance enumerated in §3503 herein and in Emergency Rule 20, including any and all other insurance licensed by the Commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on September 20, 2005 is hereby suspended and shall be deferred until January 1, 2006.

F. Any rate increase that may be applicable to any and all types of insurance enumerated in §3503 herein and in Emergency Rule 20, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on September 20, 2005 shall be deferred until January 1, 2006, and said insurance shall continue in full force and effect until January 1, 2006 at the previously established premium.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3507. Copy of Policy**

A. If an insured requests from his insurer a copy of the policy the insurer shall provide a copy of the requested policy to the insured without any charge or fee.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3509. New Policies**

A. The provisions of Emergency Rule 19 shall not apply to any new policies of insurance for the types of insurance enumerated in Emergency Rule 19 if said insurance policy was issued on or after 12:01 a.m. September 20, 2005.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3511. New Rate or Premium**

A. Emergency Rule 19 shall not affect the right of any insurer to implement a new rate or premium for any policy of insurance enumerated in §3503 if the new rate or premium had been approved for implementation by the commissioner on or before August 31, 2005, or if the insurer had mailed to the insurer the notice of the new rate or premium on or before August 31, 2005.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3513. Premium Offset**

A. All insurers regulated by Emergency Rule 19, including, but not limited to, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner and other similar or related entities receiving a claim from an insured owing a premium may offset the premium that is owed by the insured from any claim payment made to the insured under the policy. §3513 is not applicable to health insurance issuers, HMOs, PPOs, MCOs, TPAs or any other health insurance entities doing business in Louisiana and/or regulated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

#### **§3515. Written Request for Cancellation**

A. A cancellation shall not occur prior to the expiration of the State of Emergency or any subsequent State of Emergency related to Hurricane Rita and/or its aftermath, unless upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3517. Obligation to Pay Premium**

A. Unless otherwise cancelled pursuant to the provisions of §3515 herein, nothing in Emergency Rule 19 shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3519. Fraud or Material Misrepresentation**

A. Emergency Rule 19 shall not prevent an insurer from canceling or terminating a policy of insurance for fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3521. Insured's Obligation**

A. Emergency Rule 19 shall not relieve an insured who has a claim caused by Hurricane Rita and/or its aftermath from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to the claim.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3523. Interest, Penalty, Fee or Other Charge**

A. The right of an insurer to impose or levy any interest, penalty, fee or other charge is hereby suspended until the present State of Emergency, or any subsequent State of Emergency, related to Hurricane Rita and/or its aftermath has been lifted by Governor Kathleen Babineaux Blanco.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3525. Exemption from Compliance**

A. Notwithstanding any other provision contained herein, the Commissioner may exempt any insurer from compliance with Emergency Rule 19 upon the written request by the insurer if the Commissioner determines that compliance with Emergency Rule 19 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3527. Purpose**

A. The provisions of Emergency Rule 19 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3529. Penalty for Violation**

A. The commissioner retains the sole authority to enforce violations of Emergency Rule 19. Accordingly, any insurer enumerated in Emergency Rule 19 or other entity doing business in Louisiana and/or regulated by the Commissioner who violates any provision of Emergency Rule 19 shall be subject to prosecution by the Commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, R.S. 22:1214.(7), (12) and (14). Additionally, the penalty provisions set forth in R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 19, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the sole enforcement authority of the commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 19. Finally, the commissioner reserves the sole right to make the determination regarding whether any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 19.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3531. Rule Amendment**

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 19.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3533. Severability Clause**

A. If any section or provision of Emergency Rule that is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 19, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3535. Effective Date**

A. Emergency Rule 19 shall become effective at 12:01 a.m. on September 20, 2005 and shall continue in full force and effect for the duration of the present State of Emergency proclaimed by Governor Kathleen Babineaux Blanco, or any subsequent State of Emergency proclamation made thereafter.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

J. Robert Wooley  
Commissioner

0511#032

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

Rule 19—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Rita (LAC 37:XI.3537-3545)

Emergency Rule 19 was adopted on October 26, 2005 and is retroactive to 12:01 a.m. on September 20, 2005. As justification for the action taken pursuant to this amendment, J. Robert Wooley, Commissioner of Insurance ("Commissioner"), hereby reiterates, reaffirms and readopts all of the sections and provisions set forth in original Emergency Rule 19 by reference as if set forth herein *in extenso*.

The commissioner has determined that Emergency Rule 19 has had the desired effect of providing sufficient time for insureds in Louisiana to protect their insurance needs, make claims for covered losses under their insurance policy and/or take sufficient action to begin the process to return to normalcy in the post-Rita era. Additionally, the commissioner has determined that the viability of the insurance industry and the ability of Louisiana insureds to continue to obtain affordable insurance for all the various types of insurance necessary to maintain a healthy economy may be negatively impacted if Emergency Rule 19 is not terminated at some reasonable dates in the near future.

Accordingly, the commissioner has determined, pursuant to the grants of authority set forth in the original Emergency Rule 19, that it is appropriate to set dates for the systematic and methodical termination of Emergency Rule 19. Additionally, the commissioner has determined that it is proper to distinguish between the types of insurance that may still need to be extended to insureds as well as to distinguish between those insureds located in the primary parishes that may still need some additional time to handle their insurance needs. Finally, the commissioner has determined that it is appropriate to delineate between the types of insurance for which no further extension of time is needed by insureds as well as to delineate between the category of insureds located in those primary parishes that have had sufficient time to determine their insurance needs, handle any claims for covered losses and/or make premium payments with regard to their insurance matters.

In light of this, Emergency Rule 19 is hereby amended to provide various termination dates for various types of insurance and to provide for termination dates with regard to those insureds located in both the primary and secondary parishes as defined in Emergency Rule 19. This Declaration of Emergency was adopted on November 1, 2005.

## Title 37 INSURANCE Part XI. Rules

### Chapter 35. Rule 19—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Rita

#### §3537. Affirmation of Emergency Rule 19 and Amendment

A. Emergency Rule 19 was previously adopted by the commissioner on October 26, 2005, retroactive to 12:01 a.m. on September 20, 2005. In furtherance of the power vested in the commissioner and the jurisdiction of the commissioner over all matters related to insurance that were affected by Hurricane Rita and/or its aftermath the commissioner hereby amends Emergency Rule 19 to adopt new sections and provisions and to set forth dates for the termination of Emergency Rule 19.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

#### §3539. Termination

A. Emergency Rule 19 shall terminate for the category of insureds and for the types of insurance set forth herein on the dates established below:

1. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 19 shall terminate with regards to any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medical supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance for the following category of insureds:

a. any person who previously met the definition of §3501.A.1 of Emergency Rule 19 who resided in one of the following three primary parishes: Calcasieu, Cameron and Vermilion;

b. any person who previously met the definition of §3501.A.2 of Emergency Rule 19;

c. any person who previously met the definition of §3501.A.3 of Emergency Rule 19 and who resided in one of the following nine secondary parishes: Acacia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary and Terrebonne;

d. any person who previously was extended protection pursuant to §3501.A.4 of Emergency Rule 19.

2. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 19 shall terminate for all types of insurance enumerated in §3503 of Emergency Rule 19 for the following category of insureds:

a. any person who previously met the definition of §3501.A.1 of Emergency Rule 19 who resided in one of the following three primary parishes: Calcasieu, Cameron and Vermilion;

b. any person who previously met the definition of §3501.A.2 of Emergency Rule 19;

c. any person who previously met the definition of §3501.A.3 of Emergency Rule 19 and who resided in one of the following nine secondary parishes: Acadia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary and Terrebonne;

d. any person who previously was extended protection pursuant to §3501.A.4 of Emergency Rule 19.

3. Effective at 12:00 a.m. (midnight) on December 31, 2005, if not previously terminated herein pursuant to §3539.A.1 or §3539.A.2, Emergency Rule 19 shall terminate for all insureds defined in Section 3501.A of Emergency Rule 19 and for all of the types of insurance enumerated in §3503 of Emergency Rule 19:

a. any person who previously met the definition of §3501.A.1 of Emergency Rule 19 who resided in one of the following three primary parishes: Calcasieu, Cameron and Vermilion.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

#### **§3541. Nonrenewal, Nonreinstatement and Premium Increase**

A. The commissioner reiterates that, except as provided for in §3515 of Emergency Rule 19, the nonrenewal or nonreinstatement of any and all types of insurance enumerated in §3503 of Emergency Rule 19 and in Section 3701.B of Emergency Rule 20, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on September 20, 2005 is hereby suspended and shall be deferred until January 1, 2006 for those insureds who are current with their premium payments.

B. The commissioner reiterates that any rate increase that may be applicable to any and all types of insurance enumerated in Section 3503 of Emergency Rule 19 and in §3701.B of Emergency Rule 20, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on September 20, 2005 shall be deferred until January 1, 2006, and said insurance shall continue in full force and effect until January 1, 2006 at the previously established premium for those insureds who are current with their premium payments.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

#### **§3543. Continuing Jurisdiction**

A. The commissioner hereby retains the right of continuing jurisdiction over all sections and provisions set forth in Emergency Rule 19, as originally adopted and/or as amended, after the termination of Emergency Rule 19 for purposes of interpretation, enforcement and any and all other regulatory action.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

#### **§3545. Severability Clause**

A. If any section or provision of Emergency Rule 19, as originally adopted and/or as amended, is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 19, as originally adopted and/or as amended, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

J. Robert Wooley  
Commissioner

0511#051

### **DECLARATION OF EMERGENCY**

#### **Department of Insurance Office of the Commissioner**

Rule 20—Suspension of Certain Statutes and Regulations  
Regarding Health Insurance and Related Provisions  
Regarding Any and All Health Insurance Matters Affecting  
Insureds in Louisiana Caused by Hurricane Rita  
(LAC 37:XI.Chapter 37)

Emergency Rule 20 is issued pursuant to the plenary authority of the Commissioner of Insurance for the state of Louisiana, including, but not limited to, the following: Proclamation No. 53 KBB 2005 issued on September 20, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency; Executive Order No. KBB 05-70 issued October 24, 2005 by Governor Kathleen Babineaux Blanco transferring authority over any and all insurance matters to Commissioner of Insurance J. Robert Wooley (Commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

On September 20, 2005, Governor Kathleen Babineaux Blanco declared a State of Emergency within the state of Louisiana in response to the expected landfall of Hurricane Rita. As a result of the hurricane's landfall, Hurricane Rita caused extensive power outages and massive flooding that destroyed many homes and impacted the livelihood of the citizens of Louisiana.

Thousands of Louisiana citizens have suffered damages due to Hurricane Rita. In some places, it could be months before electricity is restored. The homes of many Louisiana citizens were destroyed precluding habitation and the delivery of mail. This disruption has affected the ability of these citizens to pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance-related matters. Hurricane Rita has created a mass disruption to the normalcy previously enjoyed by Louisianians and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The Commissioner will be hindered in the proper performance of his duties and responsibilities regarding this State of Emergency without the authority to suspend certain

statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of health insurance subject to the Louisiana Insurance Code.

In light of this, I hereby issue Emergency Rule 20 to any and all health insurance issuers, Health Maintenance Organizations (hereinafter HMOs), Preferred Provider Organizations (hereinafter PPOs), Managed Care Organizations (hereinafter MCOs), Third Party Administrators (TPAs) and any other health insurance entities doing business in Louisiana and/or regulated by the Commissioner pursuant to the Louisiana Insurance Code regarding any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance, and any and all other types of health insurance regulated by the Louisiana Insurance Code.

Emergency Rule 20 is applicable to insureds, as defined in §3701.A.1, from the following three primary Hurricane Rita parishes: Calcasieu, Cameron, and Vermilion. Emergency Rule 20 is also applicable to insured, as defined §3701.A.3, from the following nine secondary Hurricane Rita parishes: Acadia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary and Terrebonne. The zip codes applicable to these three primary parishes include, but may not be limited to, the list identified as "Hurricane Rita Three Primary Parish Zip Code List" found on the official Louisiana Department of Insurance web site at [www.lidi.state.us](http://www.lidi.state.us). The zip codes applicable to the nine secondary parishes include, but may not be limited to, the list identified as "Hurricane Rita Nine Secondary Parish Zip Code List" found on the official Louisiana Department of Insurance web site at [www.lidi.state.us](http://www.lidi.state.us). Insureds shall include, but not be limited to, any and all policyholders, members, subscribers and certificate holders.

In the ordinary course of business, health insurance issuers, HMOs, PPOs, MCOs, TPAs and any and all other health insurance entities doing business in Louisiana and/or regulated by the Commissioner pursuant to the Louisiana Insurance Code regarding any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability insurance, short-term care insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code, are subject to certain requirements with regard to health insurance matters affecting insured citizens in Louisiana. Hurricane Rita has produced a disruption in the health insurance industry. Thus, many of the insureds in the parishes referenced above are currently unable to timely act or respond to their health insurance needs. Additionally, some insureds with policies in force as of 12:01 a.m. on September 20, 2005, who wish to make timely premium payments, are also prevented from making such payment because of the aforementioned circumstances. This could

result in an insured being without coverage and/or potentially uninsured. Emergency Rule 20 provides emergency relief to the insureds of Louisiana affected by Hurricane Rita and/or its aftermath so that these insureds will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on September 20, 2005.

## Title 37 INSURANCE

### Part XI. Rules

#### **Chapter 37. Emergency Rule 20—Suspension of Certain Statutes and Regulations Regarding Health Insurance and Related Provisions Regarding Any and All Health Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Rita**

##### **§3701. Benefits, Entitlements and Protections**

A. The benefits, entitlements and protections of Emergency Rule 20 shall be applicable to insureds who, as of 12:01 a.m. on September 20, 2005 had a policy or contract for any of the types of insurance enumerated in §3701.B, and meet one of the following criteria:

1. Any person who, as of September 20, 2005, resided in one of the following three primary parishes: Calcasieu, Cameron, and Vermilion. The zip code for these three primary parishes is on the list identified as "Hurricane Rita Three Primary Parish Zip Code List" found on the official Louisiana Department of Insurance web site at [www.lidi.state.us](http://www.lidi.state.us).

2. Any person whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one of the three primary parishes enumerated in §3701.A.1 shall be eligible to be defined as an insured if said person verifies such employment status by written documentation to his insurer. No insurer shall unreasonably withhold eligibility to an insured upon receipt of such written documentation.

3. Any person who, as of September 20, 2005, resided in one of the following nine secondary parishes: Acadia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary and Terrebonne. However any such person shall only be eligible to be defined as an insured if said person obtains written documentation from either the Chief Executive Officer of the applicable parish of the person or the United States Postal Service that said person incurred an interruption of mail service after September 20, 2005. The zip code for these nine secondary parishes is on the list identified as "Hurricane Rita Nine Secondary Parish Zip Code List" found on the official Louisiana Department of Insurance internet web site at [www.lidi.state.us](http://www.lidi.state.us).

4. Nothing in Emergency Rule 20 shall preclude an insurer from voluntarily applying the provisions of Emergency Rule 20 relating to cancellation, nonrenewal and nonreinstatement to any other person who is an insured and who resides in any parish other than the parishes set forth in §3701.A.1 or 3.

B. Emergency Rule 20 shall apply to any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, excess loss insurance, stop loss insurance, disability income insurance, short-term

health insurance, long-term care insurance and any all other health insurance.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3703. Out of Network Access**

A. All health insurance issuers, HMOs, PPOs, and MCOs with insureds in the parishes enumerated in §3701.A shall waive any and all restrictions relative to out-of-network access to health care services. This shall include, but not be limited to, HMOs, PPOs and MCOs. To avoid delays in accessing care, all health insurance issuers, HMOs, PPOs and MCOs shall waive requirements for medical certifications or pre-certifications, referrals, medical necessity reviews and notification of hospital admissions. The right of health insurance issuers, HMOs, PPOs and MCOs to conduct retrospective medical necessity reviews and retrospectively deny any and all claims is hereby suspended for non-elective health care services. Additionally, the right of health insurance issuers, HMOs, PPOs and MCOs to recoup or offset with regard to any and all claims for non-elective health care services is hereby suspended. Non-elective health care services are those that are urgent, emergent, or necessary in order to not place the health of the insured at risk. Any and all claims subject to §3703 shall not be applicable to elective health care services, cosmetic health care services or non-covered services.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3705. Paying Claims**

A. When the health insurance issuer, HMO, PPO or MCO receives the premium due, the health insurance issuer, HMO, PPO and MCO shall be obligated to pay a claim at either billed charges, or the higher of the non-participating rate/allowance or the contracted reimbursement rate. Once the health insurance issuer or HMO selects one of the options above, the health insurance issuer or HMO shall reimburse said claim at the highest benefit level in the policy or the highest percentage in the policy. The purpose and intent is to minimize the insured's out-of-pocket expense. The insured shall be held harmless and indemnified by the health insurance issuers, HMOs, PPOs and MCOs for any out of pocket expense, except for any applicable co-payments, deductibles or co-insurance. All health care professionals and health care providers rendering services to an insured from the parishes enumerated in §3701.A shall comply with the Health Care Consumer Billing and Protection Act pursuant to R.S. 22:250.41, et seq. Nothing in §3705 shall be construed to require health insurance issuers, HMOs, PPOs or MCOs to pay a claim submitted by a participating health care provider or health care professional at a rate or allowance that is higher than the applicable contracted reimbursement rate or allowance.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3707. Statute Compliance**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:250.1, *et seq.*, titled Assuring Portability, Availability and Renewability of Health Insurance Coverage, and any applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3709. Cancellation, Nonrenewal and Nonreinstatement**

A. All cancellation, termination, nonrenewal and nonreinstatement provisions, including, but not limited to, R.S. 22:250.7, 22:250.13, 22:220.9, 22:636.F and 22:2027 are hereby suspended. Additionally, all provisions of Emergency Rule 20 relating to notice of cancellation, termination, nonrenewal and nonreinstatement are incorporated herein by reference as if set forth herein *in extenso*.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3711. Renewal**

A. Any and all types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code that are subject to renewal between September 20, 2005 and January 1, 2006 are suspended and shall be renewed effective January 1, 2006, and any rate increases that were to take effect between September 20, 2005 and January 1, 2006 are suspended and shall be deferred until January 1, 2006. All types of health insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance regulated by the Louisiana Insurance Code in effect at 12:01 a.m. on September 20, 2005 shall continue in full force and effect until January 1, 2006 at the previously established premium.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3713. Claims Notification**

A. All claims notification procedures, including, but not limited to, R.S. 22:213.A.(3) through (5), Regulation 33, Regulation 74 and Regulation 77, are suspended.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### §3715. Timely Payment

A. All laws relating to timely payment are suspended and, in furtherance thereof, the following rules shall apply to timely payment:

1. Medical Care or Services—R.S. 22:250.32 through 34 and Regulation 74 (§§6007 through 6011)

a. The commissioner hereby suspends the 45 day time limit for payment of claims for non-electronic claims submission until further notice. (See R.S. 22:250.32 and the penalty provisions of R.S. 22:250.32.C.)

b. The commissioner hereby suspends the 25 day time limit for payment of claims for electronic claims submission until further notice. (See R.S. 22:250.33 and the penalty provisions of R.S. 22:250.33.C.)

c. The commissioner hereby suspends the 30 day time limit for payment of claims for insurers who have elected to utilize a 30 day payment standard for compliance until further notice. (See R.S. 22:250.34 and the penalty provisions of R.S. 22:250.32C and 22:250.33.C.)

d. Once a health insurance issuer receives the premium payment from the insured, all pending claims shall be processed and adjudicated. The health insurance issuer shall notify the health care provider that the claim is no longer pending and is being processed and adjudicated for payment. Furthermore, the suspension of the time limit for the payment of electronic and non-electronic claims will automatically be lifted and reinstated.

i. Accordingly, pursuant to R.S. 22:250.32, the 45 day time limit for payment for non-electronic claims and the penalty provisions of R.S. 22:250.32.C shall be reinstated upon the payment of the premium by the insured.

ii. Accordingly, pursuant to R.S. 22:250.33, the 25 day time limit for payment of claims for electronic claims and the penalty provisions R.S. 22:250.33.C shall be reinstated upon the payment of the premium by the insured.

iii. Accordingly, pursuant to R.S. 22:250.34, the 30 day time limit for payment for non-electronic claims and the penalty provisions of R.S. 22:250.32.C and 22:250.33.C shall be reinstated upon the payment of the premium by the insured.

2. Pharmacy Care or Services—R.S. 22:250.53 through 57.

a. The commissioner hereby suspends the 45 day time limit for payment of pharmaceutical claims for non-electronic claims submission until further notice. See R.S. 22:250.53 and the penalty provisions of R.S. 22:250.53.C.

b. The commissioner hereby suspends the 15 day time limit for payment of pharmaceutical claims for electronic claims submission until further notice. Furthermore, this suspension is applicable to Act 209 of the 2005 Regular Legislative Session. See R.S. 22:250.54 and the penalty provisions of R.S. 22:250.54.C.

c. The commissioner hereby suspends the 30 day time limit for payment of pharmaceutical claims for insurers who have elected to utilize a thirty day payment standard for compliance until further notice. See R.S. 22:250.56 and the penalty provisions of R.S. 22:250.53.C and 22:250.54.C.

d. Once a health insurance issuer receives the premium payment from the insured, all pending pharmacy claims shall be processed and adjudicated. The health insurance issuer shall notify the health care provider that the claim is no longer pending and is being processed and

adjudicated for payment. Furthermore, the suspension of the time limit for the payment of electronic and non-electronic claims will automatically be lifted and reinstated.

i. Accordingly, pursuant to R.S. 22:250.53, the 45 day time limit for payment for non-electronic claims and the penalty provisions of R.S. 22:250.53.C shall be reinstated upon the payment of the premium by the insured.

ii. Accordingly, pursuant to R.S. 22:250.54, the 15 day time limit for payment of claims for electronic claims and the penalty provisions R.S. 22:250.54.C shall be reinstated upon the payment of the premium by the insured.

iii. Accordingly, pursuant to R.S. 22:250.56, the 30 day time limit for payment for non-electronic claims and the penalty provisions of R.S. 22:250.53.C and 22:250.54.C shall be reinstated upon the payment of the premium by the insured.

e. The commissioner hereby suspends the right of health insurance issuers and HMOs from denying, pending or rejecting a claim from any pharmacists or pharmacy for a 30 day supply of prescription medications, regardless of the date of the last refill. In furtherance of this suspension, health insurance issuers and HMOs shall pay all such claims for reimbursement submitted by a pharmacist or pharmacy.

f. The commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a 30 day supply.

g. The commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

h. All health insurance issuers, HMOs, PPOs and MCOs shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### §3717. Paying Claims

A. In the event health insurance issuers, HMOs, PPOs and MCOs pend a claim(s), as allowed pursuant Emergency Rule 20, and is subsequently entitled to cancel or terminate a policy for non-payment of premium, health insurance issuers, HMOs, PPOs and MCOs shall pay those claims to the health care providers or health care professionals at the following rate or allowance.

1. For contracted health care providers or health care professionals, 50 percent of the contracted reimbursement rate.

2. For non-contracted health care providers or health care professionals, 50 percent of the non-participating rate or allowance.

3. With regard to claims submitted pursuant to this Section, when the underlying policy is cancelled or terminated for non-payment of premium, health insurance issuers, HMOs, PPOs and MCOs shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are emergent, urgent, or necessary in order to not place the health of the insured at risk.

4. With regard to any and all claims paid by health insurance issuers, HMOs, PPOs and MCOs pursuant to the

requirements of this Section, the provisions of R.S. 22:250.38 and 22:250.59 are hereby suspended and recoupment is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3719. Physician Credentialing**

A. The commissioner hereby suspends physician credentialing pursuant to R.S. 22:11.1 such that there are no credentialing requirements with regard to any and all licensed physicians who provide medical services to insureds from the parishes referenced in §3701.A.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3721. Medicare Supplement Premiums**

A. Payment of Medicare Supplement Premiums--R.S. 22:224.K

1. The commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to R.S. 22:224.K.

2. In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods during this State of Emergency or any subsequent State of Emergency including, but not be limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3723. Suspension of Cancellation**

A. The commissioner hereby suspends any and all cancellations occasioned by the inability of an insured, or his representative, from complying with any policy provisions. In furtherance of this suspension, a cancellation or nonrenewal shall not occur prior to the expiration of the State of Emergency or any subsequent State of Emergency related to Hurricane Rita, unless upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3725. Claim Caused by Hurricane Rita**

A. Emergency Rule 20 shall not relieve an insured who has a claim caused by Hurricane Rita and/or its aftermath from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3727. Imposition of Interest, Penalty or Other Charge**

A. The commissioner hereby suspends the imposition of any interest, penalty or other charge and declares that no interest, penalty or other charge shall accrue or be assessed against any insured as the result of the suspensions ordered herein.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3729. Continuation of Coverage**

A. The commissioner hereby suspends R.S. 22:220.13. In furtherance thereof, a health insurance issuer who has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on the day after the Governor lifts the State of Emergency presently in effect, or any renewal thereof. This Section is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees at any time between September 20, 2005 and the lifting of the State of Emergency by the Governor.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3731. Exemption from Compliance**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 20 upon written request by the health insurance issuer if the commissioner determines that compliance with Emergency Rule 20 may be reasonably expected to result in said insurer being subject to undue hardship, impairment or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3733. New Policies**

A. The provisions of Emergency Rule 20 shall not apply to any new policies of insurance for the types of health insurance enumerated in Emergency Rule 20 if said new health insurance policy was issued on or after 12:01 a.m. September 20, 2005.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

### **§3735. Cancelling or Terminating an Insured**

A. The provisions of Emergency Rule 20 shall not prevent health insurance issuers or HMOs from cancelling or terminating an insured based solely on fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

**§3737. Purpose**

A. The provisions of Emergency Rule 20 shall be liberally construed to

effectuate the intent and purpose expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

**§3739. Enforcement and Penalties**

A. The commissioner retains the sole authority to enforce violations of Emergency Rule 20. Accordingly, any insurer, HMOs, PPOs and MCOs, or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 20 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, R.S. 22:1214(7), (12) and (14). Additionally, the penalty provisions set forth in R.S. 22:1220 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 20, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the sole enforcement authority of the commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 20. Finally, the commissioner reserves the sole right to make the determination regarding whether any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 20.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

**§3741. Rule Amendment**

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portion of Emergency Rule 20.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

**§3743. Severability Clause**

A. If any section or provision of this Emergency Rule that is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 20, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

**§3745. Effective Date**

A. Emergency Rule 20 shall become effective at 12:01 a.m. on September 20, 2005 and shall continue in full force and effect for the duration of the present State of Emergency proclaimed by Governor Kathleen Babineaux Blanco, or any subsequent State of Emergency, with regard to Hurricane Rita and/or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 2005 - 70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:

J. Robert Wooley  
Commissioner

0511#033

**DECLARATION OF EMERGENCY**

**Department of Insurance  
Office of the Commissioner**

Rule 20—Suspension of Certain Statutes and Regulations  
Regarding Health Insurance and Related Provisions  
Regarding Any and All Health Insurance Matters Affecting  
Insureds in Louisiana Caused by Hurricane Rita  
(LAC 37:XI.3747-3759)

Emergency Rule 20 was issued on October 26, 2005 and is retroactive to 12:01 a.m. on September 20, 2005. As justification for the action taken pursuant to this amendment, J. Robert Wooley, Commissioner of Insurance ("Commissioner"), hereby terminates certain sections and provisions set forth in original Emergency Rule 20 by reference as if set forth herein *in extenso*.

The commissioner has determined that Emergency Rule 20 has had the desired effect of providing sufficient time for insureds in Louisiana to protect their health insurance needs, obtain the services of a health care provider or health care professional, file for health insurance benefits for covered claims under their health insurance policy and/or take sufficient action to begin the process to return to normalcy in the post-Rita era. Additionally, the commissioner has determined that the viability of the health insurance industry as well as the viability of the health care providers and health care professionals may be negatively impacted if Emergency Rule 20 is not terminated at some reasonable date in the near future.

Accordingly, the commissioner has determined, pursuant to the grants of authority set forth in the original Emergency Rule 20, that it is appropriate to set dates for the termination of Emergency Rule 20. Additionally, the commissioner has determined that it is proper to distinguish between those health insurance policies where the premium has been paid as compared to those where the premium has not been paid. Also, the commissioner has determined that it is proper to distinguish between those health care providers and/or health

care professionals who rendered services within and/or who operate businesses within the three primary parishes affected by Hurricane Rita and/or its aftermath.

In light of this, Emergency Rule 20 is hereby amended to provide various termination dates for the various types of health insurance and to provide for termination dates with regard to those insureds/persons located in both the primary and secondary parishes as defined in Emergency Rule 20 and to provide for the payment of claims to health care providers and health care professionals who rendered health care to insureds/persons during the time when Emergency Rule 20 is in effect. To facilitate cross referencing, this amendment will set forth both the Section of Emergency Rule 20 as issued by the commissioner and the Section of the Emergency Rule 20 as published by the Office of the State Register. This Declaration of Emergency was adopted on November 1, 2005.

**Title 37**  
**INSURANCE**  
**Part XI. Rules**

**Chapter 37. Rule 20—Suspension of Certain Statutes and Regulations Regarding Health Insurance and Related Provisions Regarding Any and All Health Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Rita**

**§3747. Affirmation of Emergency 20 and Amendment**

A. Emergency Rule 20 was previously adopted by the commissioner on October 26, 2005, retroactive to 12:01 a.m. on September 20, 2005. In furtherance of the power vested in the commissioner and the jurisdiction of the commissioner over all matters related to insurance that were affected by Hurricane Rita and/or its aftermath, the commissioner hereby amends Emergency Rule 20 to adopt new sections and provisions and to set forth dates for the termination of Emergency Rule 20.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3749. Termination**

A. Emergency Rule 20 shall terminate for the category of insureds/persons and for the types of insurance set forth herein on the dates established below:

1. Effective at 12:00 a.m. (midnight) on November 30, 2005, Emergency Rule 20 shall terminate with regards to any and all types of health insurance enumerated in Emergency Rule 20, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medical supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs, TPAs, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance and any and all other health insurance for the following category of insureds:

a. any person who previously met the definition of §3701.A.1 of Emergency Rule 20 who resided in one of the following three primary parishes: Calcasieu, Cameron and Vermilion;

b. any person who previously met the definition of §3701.A.2 of Emergency Rule 20;

c. any person who previously met the definition of §3701.A.3 of Emergency Rule 15 and who resided in one of the following nine secondary parishes: Acadia, Allen, Beauregard, Iberia, Jefferson Davis, Lafayette, Lafourche, St. Mary, and Terrebonne;

d. any person who previously was extended protection pursuant to §3701.A.4 of Emergency Rule 20.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3751. Retention of Certain Provisions of Emergency Rule 20**

A. The commissioner does not terminate the following sections of Emergency Rule 20 and these sections shall remain in effect until the Emergency Rules expires 120 days from date of adoption, unless otherwise extended by the commissioner.

1. Section 3721.A, Medicare Supplement Premiums, which states the following:

"The commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to R.S. 22:224.K.

In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods during this State of Emergency or any subsequent State of Emergency including, but not be limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods."

2. Section 3725.A - Claim Caused by Hurricane Rita, which states the following:

"Emergency Rule 20 shall not relieve an insured who has a claim caused by Hurricane Rita, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim."

3. Section 3737.A, Purpose, which states the following:

"The provisions of Emergency Rule 20 shall be liberally construed to effectuate the intent and purpose expressed herein and to afford maximum consumer protection for the insureds of Louisiana."

4. Section 3739.A, Enforcement and Penalties, which states the following:

"The commissioner retains the sole authority to enforce violations of Emergency Rule 20. Accordingly, any insurer, HMOs, PPOs and MCOs, or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 20 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:250.41, et seq., 22:1211, et seq., and specifically including, but not limited to, R.S.22:1214(7), (12) and (14). Additionally,

the penalty provisions set forth in R.S. 22:1217 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 20, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license.

Additionally, R.S. 22:1220, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the sole enforcement authority of the commissioner. That law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 20. Finally, the commissioner reserves the sole right to make the determination regarding whether any violator shall be subject to any and all other applicable civil and criminal sanctions for violations of Emergency Rule 20."

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3753. Extended Time Frames for State Continuation**

A. The commissioner hereby suspends R.S. 22:215.13 for group health insurance election time frames to allow insureds/persons additional time to elect group health insurance continuation. The commissioner hereby extends the time frames to 120 days from the date of adoption, unless extended by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3755. Nonrenewal, Nonreinstatement and Premium Increase**

A. The commissioner reiterates that, except as provided for in §2715 of Emergency Rule 15, the nonrenewal or nonreinstatement of any and all types of insurance enumerated in §2703 of Emergency Rule 15 and in §3701.B of Emergency Rule 20, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 is hereby suspended and shall be deferred until January 1, 2006 for those insureds who are current with their premium payments.

B. The commissioner reiterates that any rate increase that may be applicable to any and all types of insurance enumerated in §2703 of Emergency Rule 15 and in §3701.B of Emergency Rule 20, including any and all other insurance licensed by the commissioner, or doing business in Louisiana, that was in effect at 12:01 a.m. on August 26, 2005 shall be deferred until January 1, 2006, and said insurance shall continue in full force and effect until January 1, 2006 at the previously established premium, for those insureds who are current with their premium payments.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3757. Continuing Jurisdiction**

A. The commissioner hereby retains the right of continuing jurisdiction over all sections and provisions set forth Emergency Rule 20, as originally adopted and/or as amended, after the termination of Emergency Rule 20 for purposes of interpretation, enforcement and any and all other regulatory action.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

**§3759. Severability Clause**

A. If any section or provision of Emergency Rule 20, as originally adopted and/or as amended, is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 20, as originally adopted and/or as amended, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order KBB 05-40, R.S. 29:724, R.S. 29:766, R.S. 22:2, R.S. 22:3, R.S. 22:1214.(7), (12) and (14), R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

J. Robert Wooley  
Commissioner

0511#052

**DECLARATION OF EMERGENCY**

**Department of Revenue  
Office of Charitable Gaming**

Electric Bingo Card Dabber Devices  
(LAC 42:1.2101-2111)

Under authority of R.S. 4:703 and 739, and 47:1511, and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Charitable Gaming, is issuing an Emergency Rule to adopt LAC 42:1.2101-2111, to provide for the regulation of the use of electronic bingo card dabber devices and systems.

This Emergency Rule is necessary to provide relief to charitable organizations devastated by Hurricanes Katrina and Rita to conduct charitable bingo games using electronic bingo card dabber devices without the need for bingo paper. This Emergency Rule is effective November 1, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or adoption of the permanent Rule, whichever occurs first.

**Title 42**

**LOUISIANA GAMING**

**Part I. Charitable Bingo, Keno, Raffle**

**Subpart 2. Electronic Video Bingo**

**Chapter 21. Electronic Bingo Card Dabber Devices**

**§2101. Definitions**

A. As used throughout this Chapter, the following definitions apply.

*Applicant*—any person who has applied for registration as a manufacturer, distributor, or supplier for electronic bingo card dabber devices.

*Distributor*—a person or business entity that owns and/or leases electronic bingo card dabber devices to a charitable organization.

*EBCDD*—electronic bingo card dabber device.

*Electronic Bingo Card Dabber Device System (EBCDD System)*—any electronic or computerized device and related hardware and software that is interfaced with or connected to equipment used in connection with EBCDD to conduct a game of bingo.

a. May include secondary components provided by the manufacturer that are part of or are connected to EBCDD that does not affect the conduct of the game of bingo.

b. EBCDD systems may include, but are not limited to, computer screen backgrounds, battery charge up, software routines, modems, monitors, keyboards, pointer devices, mice, printers, printer software drivers, radio frequency (RF) software and hardware, TV tuners, and charging racks.

*Law*—the Charitable Raffle, Bingo and Keno Licensing Law, R.S. 4:701 et seq.

*Lease Agreement*—the lease agreement between the holder of a bingo license and the distributor of electronic bingo dabber devices or the agreement between the distributor of electronic bingo card dabber devices and the manufacturer.

*Office*—The Office of Charitable Gaming under the Louisiana Department of Revenue.

*Person*—an individual, partnership, joint venture, or corporation doing business in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:703 and 739.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Charitable Gaming, LR 32:

### **§2103. Registration of Manufacturers, Distributors or Owners of Electronic Bingo Card Dabber Devices**

A. Any person desiring to own, sell, or distribute electronic bingo card dabber devices in this state must comply with the following:

1. be issued and maintain all required federal, state, parish, and municipal licenses;
2. apply to the office and pay the required licensing fee as prescribed in R.S. 4:705(2);
3. apply to the office 90 days prior to June 30 for a renewal of registration and pay the nonrefundable renewal fee as prescribed in R.S. 4:705(2);
4. furnish to the office quarterly reports identifying the quantities, models, manufacturers, owners, and distributors of machines, and any other information the office determines necessary; and
5. meet the suitability and business relationship criteria of R.S. 4:718.

B. No manufacturer or distributor except one that is a licensed charity may be registered to hold a permit or be directly involved with the operating or the assisting in the operation of any other game of chance permitted under the act. In addition, no manufacturer or distributor may be involved in directly or indirectly in leasing or renting any premises or equipment for such game or in the providing of

any other incidental goods or service in connection with such game or games.

C. No manufacturer or distributor may ship electronic video machines into this state until an application for registration is granted by the office.

D. Registration may be suspended or revoked by the office upon determination, after notice and opportunity for hearing, that the registrant has not complied with the conditions of registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:726 and 739.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Charitable Gaming, LR 32:

### **§2105. Electronic Bingo Card Dabber Device Approval Process**

A. Eligibility. Electronic bingo card dabber devices and systems will only be allowed under the following criteria:

1. a charitable organization doing business in those parishes or incorporated municipalities where an ordinance has been adopted allowing charitable games of chance; or
2. a manufacturer or distributor of electronic bingo card dabber devices that is registered under the law and leases or rents the machines only to charitable organizations in parishes or incorporated municipalities where an ordinance has been adopted allowing charitable games of chance.

B. Application

1. Upon approval of the manufacturer's application by written notice from the office, the manufacture will be allowed to submit electronic bingo card dabber devices (EBCDD) and EBCDD systems for certification to an independent testing laboratory approved by the office.

2. The manufacturer must agree to pay all costs associated with the testing by the independent testing laboratory, which will use established uniform testing criteria.

3. Prior to the shipment of EBCDD devices or EBCDD systems into the state, manufacturers must receive final written approval from the office.

C. EBCDD Specifications. Each EBCDD must include the following specifications:

1. a model number and unique identification number designated by the manufacturer;
2. be programmed to automatically erase all electronic bingo cards and/or bingo card face numbers that were stored in the device upon turning off the device after the last bingo game of each session or by some secondary timing or clearing method;
3. offer for play only the game commonly known as bingo. EBCDD may not allow the play or simulate the play of video poker, keno, blackjack, slots, or similar games.

D. EBCDD System Specifications. Each EBCDD System must include the following specifications:

1. A self-contained receipting function for electronic bingo cards and be able to print out a copy of the receipt for each sale or void of an EBCDD. The receipt must be given to the player and must include the following information:
  - a. EBCDD model and unique identification number,
  - b. the date and time of the transaction;
  - c. the session in which the product was used;
  - d. the quantity of electronic bingo cards purchased or loaded;
  - e. the total dollar amount of the transaction; and

f. the sequential and consecutive transaction number;

2. not be able to engage in any type of sale, void, alteration, or reload transactions unless the EBCDD is connected or interfaced with and communicating with the site system;

3. include a point of sale station and an internal accounting system that is capable of recording each sale of EBCDD;

4. be able to provide the winning numbers and game patterns required for the entire bingo session on a hard copy printout. The printout must be available upon demand by the office at the bingo session;

5. electronically verify that the numbers appearing on a potential winning electronic bingo card is a valid bingo and that the bingo card was purchased during the current session;

6. ensure that an EBCDD does not allow for play any bingo card faces other than those verifiably purchased by the player;

7. ensure that system has the capability to produce a summary report, on a hard copy transaction log, after each session that includes the following information:

- a. name and state license number of organization;
- b. date and time of report;
- c. number of EBCDDs loaded;
- d. number and description of electronic bingo faces loaded into the EBCDDs;
- e. voided transactions; and
- f. total sales;

8. must include software that ensures the internal accounting system is capable of recording and retaining for each session the following information:

- a. the unique serial number of each bingo card sold for EBCDD use;
- b. the sale price of each card or card package for use with an EBCDD;
- c. the total amount of EBCDD sales;
- d. the total number of card faces sold for use with EBCDDs;
- e. the model and unique identification number associated with each EBCDD sold;
- f. all the above information must be secured and shall not be accessible for alteration during a session; and
- g. must have the capability to print all required information on the system's active or archived databases for a period not less than 12 months;

9. may have dial-up capability, so that the office has the ability to remotely verify operation, compliance, and internal accounting systems;

10. may include a player tracking computer software that is used to identify or track certain characteristics of bingo players, including but not limited to, personal data and purchasing habits of players at a particular location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:739.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Charitable Gaming, LR 32:

### **§2107. Equipment Malfunctions and Inspections**

A. Any malfunction or problems with an EBCDD or EBCDD system that could affect the security or integrity of the bingo game, the bingo card monitoring devices, or other

bingo systems, must be logged and the office must be notified of the malfunction as soon as possible.

B. The office's authorized representatives may examine and inspect any individual EBCDD or EBCDD system. Examination and inspection includes immediate access to the EBCDD and unlimited inspection of all secondary parts of the EBCDD system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 739.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Charitable Gaming, LR 32:

### **§2109. Reporting and Record Requirements**

A. Reporting Requirements—Manufacturers

1. Each manufacturer selling, leasing, or otherwise furnishing EBCDD or EBCDD systems must maintain a log or other records, such as invoices, which includes the following information:

- a. the date of transaction;
- b. the model and unique identification number of each EBCDD and EBCDD system;
- c. the model and/or version number of all components of the EBCDD system;
- d. the name of the distributor to whom the EBCDD or EBCDD system was sold, leased, or otherwise furnished;
- e. the time period covered by the invoice;
- f. the quantity sold or leased; and
- g. the total invoice amount.

2. Each licensed manufacturer shall file with the office a quarterly report signed by an official of the manufacturer as described in §1707 on form prescribed and supplied by the office. The report must be postmarked, or if hand delivered, received in the office, no later than the last business day of the first month following the end of the quarter. Quarters are on a calendar year basis and end on March 31, June 30, September 30, and December 31. The report must include the following information:

- a. licensed distributor sold or leased to;
- b. number of units sold or leased;
- c. item description or model number;
- d. cost or lease amount per item; and
- e. total sale amount or leased amount.

3. In addition to any other civil or criminal penalties, manufacturers may be assessed a \$100 late penalty for each quarterly report or reports not submitted timely after notice and opportunity for a hearing held in accordance with the Administrative Procedure Act. Repeated violations are cause for denial, suspension, or revocation of license.

B. Reporting requirements—Distributors

1. Each Distributor selling, leasing, or otherwise furnishing EBCDD or EBCDD systems must maintain a log or other records, such as invoices, which includes the following information:

- a. the date of transaction;
- b. the model and unique identification number of each EBCDD and EBCDD system;
- c. the model and/or version number of all components of the EBCDD system;
- d. the name of the organization to which the EBCDD or EBCDD system was sold, leased, or otherwise furnished;
- e. the time period covered by the invoice;
- f. the quantity sold or leased; and

g. the total invoice amount.

2. Each licensed distributor shall file with the office a monthly report signed by an official of the distributor as described in §1707 on form prescribed and supplied by the office. The office must receive the report, along with the user fees, no later than the midnight of the 15th of each following month. The report must include the following information:

- a. licensed organization sold or leased to;
- b. number of units sold or leased;
- c. item description or model number;
- d. cost or lease amount per item;
- f. total number of card faces sold for use by EBCDDs;
- g. total sale amount or leased amount; and
- h. total amount of use fees collected.

3. In addition to any other civil or criminal penalties, distributors may be assessed a \$100 late penalty for each monthly report or reports not submitted timely after notice and opportunity for a hearing held in accordance with the Administrative Procedure Act. Repeated violations are cause for denial, suspension, or revocation of license.

#### C. Reporting requirements—Organizations

1. Each Organizations leasing or otherwise utilizing EBCDD or EBCDD systems must maintain a log or other records, which includes the following information:

- a. the date of transaction;
- b. the model and unique identification number of each EBCDD and EBCDD system;
- c. the model and/or version number of all components of the EBCDD system;
- d. the name of the distributor(s) whom the EBCDD or EBCDD system were leased or otherwise furnished;
- f. the time period covered by the invoice;
- g. the quantity sold or leased; and
- h. the total invoice amount.

2. Each Organization must receive approval from the office for the selling price of paperless sales. Any configuration desiring to be sold by an organization must have prior approval from the office.

3. All paperless sales must be reported on the Organization quarterly report as gross proceeds from bingo.

4. A violation of the aforementioned provisions may result in a civil penalty and possible revocation of license in accordance with these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 716 and 739.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Charitable Gaming, LR 32:

### §2111. Enforcement

A. Applicant Suitability and Business Relationships. The office may deny an application or revoke, suspend, restrict, or limit a permit or approval of a electronic bingo card dabber device or system when it is determined that the applicant or a business relationship between an applicant and another person or business entity is unsuitable or endangers the health, safety, or welfare of the citizens of this state. In determining the suitability of an applicant or other persons or business entities in a business relationship, the office may consider the following factors relating to the person or business entity:

1. general character, including honesty and integrity;

2. financial security and stability, competency, and business experience in the capacity of the relationship;

3. records, if any, of violations that may affect the legal and proper operation of a machine including a violation affecting another permittee or applicant and any violation of the laws of this state, other states, and countries without limitations as to the nature of the violation;

4. refusal to provide access to records, information, equipment, or premises to the office or its authorized representatives when access is reasonably necessary to ensure or protect public health, safety, or welfare.

#### B. Approval of Electronic Bingo Card Dabber Devices or Systems

1. The office may conditionally approve and maintain a list of specific models of electronic bingo card dabber devices (EBCDD) or EBCDD systems based on its finding that the machines conform to R.S. 4: 739.

a. Final approval of each EBCDD and EBCDD system is required even if the device or system has been conditionally approved.

b. Conditional or final approval may be withdrawn by the office if it is found that a device or system does not conform to specifications and testing standards, including new or revised requirements.

2. The office may allow shipment of an EBCDD or EBCDD system for the purpose of providing conditional approval of that make or model provided the following conditions are met.

a. The office will not be responsible for any purchase, shipping, or handling charges;

b. All information required by this Section must accompany the EBCDD or EBCDD system; and

c. Prior to shipment, the office has approved shipment of an EBCDD or EBCDD system for scheduled testing and approval.

3. If the specifications are changed such that previously approved machines do not comply, the office will allow a specified time for a permittee to bring an EBCDD or EBCDD system into compliance.

C. Machine Repair. To assure the integrity, security, and monitoring of EBCDD or EBCDD systems in service, a permitted EBCDD or EBCDD system or any portion thereof may not be substituted or replaced until the replacement EBCDD or EBCDD system has been permitted by the office.

#### D. Inspection and Seizure of EBCDD or EBCDD Systems

1. The office or its authorized representative has the right at all times to make an examination of any EBCDD or EBCDD system being used to play electronic bingo. The right of inspection includes immediate access to all EBCDD or EBCDD systems and unlimited inspection of all parts. The office or its authorized representative may immediately seize and remove any machine or device that violates the law or this Section. Emergency seizure is subject to a hearing as described in R.S. 4:711.

2. Given reasonable cause, the office may remove an EBCDD or EBCDD system or any parts for laboratory testing and analysis. When parts are removed, the office may seal any EBCDD or EBCDD system left on the permittee's premises pending the investigation. Breaking or removal of the seal without approval, may subject the permittee to

seizure of the entire EBCDD or EBCDD system and suspension or revocation of the permit.

E. Investigation of Permittee. The office may, upon its own motion, and will, upon receipt of a written verified complaint of any person, investigate the actions of any permittee and the operations of any EBCDD or EBCDD system. The investigation shall be undertaken for the purpose of gathering evidence and determining whether a violation of the law, Rules, or other statutes has occurred.

F. Civil Violations

1. When the office determines a permittee has violated the law or these Rules, the office may issue a civil violation to the permittee in an amount not less than \$250 nor more than \$1,000. Violations may be issued for each offense not in accord with these regulations. Each day of operation in violation constitutes a separate violation.

2. A violation may be issued for the following acts:

- a. the operation or possession of an unapproved EBCDD or EBCDD system;
- b. the failure to report and pay timely the fees assessed;
- c. the falsification of application or reporting documents; or
- d. the refusal to allow inspection of the EBCDD or EBCDD system.

G. Suspension and Revocation

1. The office may suspend any and all permits held by an alleged violator after opportunity for hearing when:

- a. the office receives a certified copy or other credible evidence of a judgment or conviction of any permittee or the permittee's agent, servant, or employee for any violation of any criminal law or ordinance of the United States, the State of Louisiana, or any Louisiana parish or town relating to charitable gaming;
- b. the office receives a certified copy of the record or other credible evidence of the forfeiture by any permittee or the permittee's agent or employee of bond to appear to answer charges of violating any law or ordinance relating to charitable gaming; or
- c. the office, after investigation, has reasonable cause to believe that any permittee, or the permittee's agent or employee has violated the provisions of the law or these Rules and has been issued a violation or citation.

2. The office may suspend a permit or permits prior to the opportunity for hearing when the office, after investigation, has reasonable cause to believe continued operation of the permitted machine endangers public health, safety, and welfare. During the period of suspension, the permittee may not operate the EBCDD or EBCDD system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:711 and 739.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Charitable Gaming, LR 32:

Michael E. Legendre  
Director

0511#014

## DECLARATION OF EMERGENCY

### Department of Revenue Policy Services Division

#### Annual Retirement Income Exemption for Individuals 65 or Older (LAC 61:I.1311)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, R.S. 47:295 and R.S. 47:1511, which allow the Department to make reasonable rules and regulations, the Secretary of Revenue hereby finds that imminent peril to the public welfare exists and accordingly adopts the following emergency rule. This Emergency Rule shall be effective November 20, 2005, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

This Emergency Rule is necessary to allow the Department of Revenue to inform taxpayers that only the individual who actually received the annual retirement income is entitled to the exemption. A delay in promulgating this Rule would have an adverse impact on the taxpayers who are unaware of the limitation of this exemption.

Louisiana Revised Statutes 47:44.1 allows an individual who is 65 years of age or older and who receives annual retirement income to exempt up to \$6,000 of this income from state income tax. This proposed regulation will inform individual income taxpayers and their representatives that for all tax years beginning on or after 2005 only the individual who actually received the annual retirement income is entitled to the exemption. It will also provide guidance to taxpayers to assist them in determining who is the recipient of annual retirement income from a pension, annuity or individual retirement account.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 13. Income: Individual

#### §1311. Annual Retirement Income Exemption for Individuals 65 or Older

A. Louisiana Revised Statutes 47:44.1 provides an exemption of up to \$6,000 for annual retirement income received by an individual who is 65 years of age or older. Only the individual who actually received the annual retirement income is entitled to the exemption.

*Annual Retirement Income*—pension and annuity income which is included in *tax table income*.

*Tax Table Income*—as defined in La. Rev. Stat. 47:293.

B. For purposes of determining the total annual retirement income exemption that can be claimed on a Louisiana individual income tax return, an individual receives annual retirement income as follows:

1. Receipt of Benefits Paid from a Pension Plan. Except as otherwise provided herein, only the plan participant receives annual retirement income from the pension plan, the non-participant spouse does not receive annual retirement income from the plan.

2. Receipt of Annuity Income. Only the named payee or named annuitant receives annual retirement income from an annuity.

3. Receipt of Income from an Individual Retirement Account. Only the named payee or distribute receives annual retirement income from an individual retirement account.

4. Exceptions

a. If there is a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), payments received by the alternate payee will be considered annual retirement benefits received by an individual.

b. Survivor benefits paid from a pension plan to the plan participant's surviving spouse will be considered annual retirement benefits received by an individual.

C. Examples

1. Mary and John are a married couple. Mary worked for X Corporation for 35 years from 1964 until she retired in 1999. While working for X Corporation, Mary participated in the corporation's pension plan. In 2005, Mary received a total of \$30,000 in distributions from the X Corporation pension plan. John's only source of retirement income is federal social security, which is not included in the couple's tax table income because it is already exempt under R.S. 47:44.2. Mary and John's filing status for federal and state income tax is married filing joint and they are both over 65. Because only Mary receives annual retirement income, Mary and John may only exempt \$6,000 of Mary's retirement income from their 2005 income taxes under this exemption. Because John is not the plan participant, he has not received any annual retirement income for purposes of the exemption.

2. Scott and Ellen are a married couple. Their filing status for federal and state income tax is married filing joint and they are both over 65. Because they are both 65 years of age or older, each of them is entitled to exempt up to \$6,000 of the annual retirement income each of them receive. Scott worked for ABC Corporation for 35 years from 1964 until he retired in 1999 at the age of 65. While working for ABC Corporation, Scott participated in the corporation's pension plan. In 2005, Scott received a total of \$30,000 in distributions from the ABC Corporation pension plan. Ellen has two sources of retirement income; federal social security that is already exempt under R.S. 47:44.2 and an annuity paid to her as the named annuitant in the amount of \$4,000 annually. Scott may exempt \$6,000 of his ABC Corporation pension income and Ellen may exempt all of her \$4,000 annuity income for a combined exemption of \$10,000.

3. Alan and Leslie are a married couple who do not live apart. Their filing status for federal and state income tax is married filing separate and they are both over 65. Because they are both 65 years of age or older, each of them is entitled to exempt up to \$6,000 of the annual retirement income each of them receive on their married filing separate returns. Alan is the named annuitant of an annuity from which he receives annual retirement income of \$10,000. Leslie is not yet retired and receives a salary, but no annual retirement income. Alan's annuity income and Leslie's salary are community property. Because Louisiana is a community

property state and the couple has chosen not to file a joint return, Leslie must report one half of Alan's annuity income, or \$5,000, on her married filing separate federal and state income tax returns. Because Leslie is not the named annuitant, she has not received annual retirement income for purposes of the exemption and cannot claim any exemption amount on her return. Because Alan is only reporting \$5,000 of his annuity income on his federal and state income tax returns, he is only entitled to an exemption of \$5,000.

4. Assume the same facts as in Example 3 except that Alan and Leslie have a separation of property agreement. Each spouse will therefore report his or her own items of income and loss on his or her own married filing separate return. Allan will report the entire amount of his annuity income and will be entitled to exempt \$6,000 of the \$10,000 of annual retirement income he receives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:44.1, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 32:

Cynthia Bridges  
Secretary

0511#045

**DECLARATION OF EMERGENCY**

**Department of Revenue  
Policy Services Division**

Hurricane Katrina—Hotel Sales Tax Exclusion  
Uniform State and Local Sales Tax Definitions  
(LAC 61:I.4301)

The Department of Revenue, Policy Services Division, hereby repeals the Emergency Rule that was adopted August 27, 2005, to provide tax relief for citizens whose occupancy of hotel rooms in Louisiana was necessitated when Hurricane Katrina displaced them from their normal places of dwelling.

This Rule is being repealed effective November 1, 2005, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), because the need for this relief has diminished.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered  
by the Secretary of Revenue**

**Chapter 43. Sales and Use Tax**

**§4301. Uniform State and Local Sales Tax Definitions**

A. ...

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. ...

*Hotel*—

a. The term *hotel* has been defined under R.S. 47:301(6) to be somewhat more restrictive than normally construed, both as to use of the facility and relative size. Only those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins primarily to transient guests consisting of six or more guest or sleeping definition. If an establishment has less than six sleeping

rooms, cottages or cabins at a single business location or if more than one-half of the guests are permanent, regardless of the number of sleeping rooms, cottages or cabins, the establishment is not a *hotel* for purposes of *state* and *local sales or use tax*.

b. In determining whether an establishment furnishes sleeping rooms primarily to transient guests, each guest must be considered individually. A guest who engages his lodging and pays his bill on a monthly basis and who remains as a guest for two consecutive months is considered to be a permanent guest and not transient. Guests who remain for any lesser period are considered transient.

\* \* \*

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 32:

Raymond E. Tangney  
Senior Policy Consultant

0511#027

## DECLARATION OF EMERGENCY

### Department of Revenue Policy Services Division

#### Interest Waiver and Filing Extensions Following Disasters (LAC 61:III.2111)

Under authority of R.S. 47:1601(A)(2)(e) and 1511 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, is issuing an emergency rule to adopt LAC 61:III.2111 to provide automatic extensions and interest waivers for tax returns filed by taxpayers located in disaster areas.

This Emergency Rule is necessary to provide relief to the affected taxpayers and to allow additional time to file returns without having to request extensions. This Emergency Rule is effective October 20, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or adoption of the permanent rule, whichever occurs first.

#### Title 61

#### REVENUE AND TAXATION

#### Part III. Department of Revenue—Administrative Provisions and Miscellaneous

#### Chapter 21. Interest and Penalties

#### §2111. Interest Waiver and Filing Extensions Following Disasters

A. The following provisions apply to all returns due following a disaster.

1. Automatic Extensions. Taxpayers located within the disaster areas will automatically be granted the applicable statutory extensions for filing returns without having to file an application for extension.

2. Interest Waiver. Interest on these returns due as a result of a disaster may be waived in accordance with the following guidelines.

a. If the return is filed within the applicable statutorily provided extension period, interest will be automatically waived.

b. If the return is filed after the applicable statutorily provided extension period, the taxpayer must file a written request to have the interest waived.

3. Tax Preparers. If a taxpayer's tax preparer is located within the disaster area, and as a result the taxpayer's returns are not timely filed, the taxpayer must make a written request for interest due as a result of the disaster to be waived.

4. Consolidated Returns. Taxpayers filing consolidated returns for locations within and without the disaster areas should file returns using the information available at the time the return is due. When the amended return is filed to accurately reflect the taxpayer's information, the taxpayer should attach a written request to waive any interest due as a result of the disaster.

#### B. Definitions

*Disaster Area*—a parish or location that has been declared a disaster area by the President.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1601(A)(2)(e) and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:

Cynthia Bridges  
Secretary

0511#007

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Community Services

#### Billing Policies and Fee Review Procedures (LAC 67:V.Chapter 53)

The Department of Social Services, Office of Community Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to promulgate LAC 67:V, Subpart 7, Chapter 53, Billing Policies and Fee Review Procedures, effective October 28, 2005. This Emergency Rule shall remain in effect for a period of 120 days or until publication of the final Rule. This action is necessary to extend the original Emergency Rule of July 1, 2005, which will expire before the final Rule takes effect. (Final Rule will be published in January 2006).

#### Title 67

#### SOCIAL SERVICES

#### Part V. Community Services

#### Subpart 7. Payment of Legal Fees in Child Protection Cases

#### Chapter 53. Billing Policies and Fee Review Procedures

#### §5301. Purpose

A. This chapter provides billing policies and fee review procedures applicable to requests for payment of legal fees and expenses of attorneys representing children or indigent

parents in child in need of care and judicial certification for adoption proceedings pursuant to R.S. 46:460.21.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:

### **§5303. Billing Policies**

A. All prerequisites for payment specified in R.S. 46:460.21 shall be met. Attorneys shall comply with all minimum qualification standards specified by Louisiana Supreme Court in order to be eligible for compensation.

B. Rates of payment shall be in accordance with Louisiana Supreme Court General Administrative Rule Part G, Section 9.

C. Upon completion of a discrete stage in child in need of care (CINC) proceedings and final judgment in judicial certification for adoption proceedings, attorneys must submit requests for payment the earlier of 90 days of completion or final judgment or 30 days from the end of the state fiscal year (state fiscal year runs July 1-June 30). Discrete stages in child in need of care proceedings include CINC proceedings through disposition, six-month reviews, and for attorneys representing children, one-year reviews post termination or surrender of parental rights when the child(ren) has not yet been permanently placed. Discrete stages may also include continued custody hearings when the attorney is appointed for that hearing only, CINC proceedings where a petition is not filed or is withdrawn prior to adjudication, CINC proceedings leading up to an Informal Adjustment Agreement, adjudication where the petition is denied, and CINC proceedings prior to disposition where an attorney appointed to act as counsel is permitted by the court to withdraw upon a finding of extenuating circumstances.

D. The detailed itemization of services must conform to the following invoicing standards.

1. Time and expenses billed shall be reasonable and necessary and based on contemporaneous record keeping. Minimum billable time increments shall be no greater than 1/10 of an hour. Each service activity shall be listed individually with its corresponding time increment. Paragraph or block billing whereby multiple discrete activities are billed within a single time increment will not be accepted for payment. Billing for bill preparation will not be accepted for payment. Travel time to and from the court that relates to mileage of less than 20 miles per trip will not be accepted for payment. The department shall make a sample invoice available to any requesting attorney.

2. Each service entry shall include a brief, but specific description of the service rendered, the date, the persons involved (e.g., client, other parties and their attorneys, OCS worker, foster parents, CASA volunteer, judge, etc.) and the purpose of the service or event.

3. For child in need of care cases, service entries shall be organized in accordance with discrete stages of the proceedings.

4. Expenses billed must relate to a specific legal service performed and include the date and amount of the expense. A receipt or other appropriate documentation of the expense must be attached. Mileage in excess of 20 miles per trip shall be reimbursable in accordance with state travel regulations established by the state Division of Administration. Beginning and ending odometer readings or

alternatively Mapquest documentation of mileage must be included in the itemization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:

### **§5305. Fee Review Procedures**

A. In Accordance with R.S. 46:460.21

1. An attorney requesting fees certifies:

a. he complies with all minimum qualifications for providing representation in child protection cases required by the state of Louisiana;

b. the statements contained in the fee request documents are true and correct;

c. the services and expenses billed are reasonable and necessary and consistent with effective and efficient practice in child protection cases;

d. for representation of counsel on behalf of a parent, the parent is indigent in accordance with law;

e. the attorney has received no compensation for the services or expenses described nor will he be receiving or eligible to receive such compensation from any other source.

2. The judge exercising juvenile jurisdiction determines based upon the attorney's certification, information contained within the form and supporting documentation, and his or her knowledge of the proceedings that the number of hours billed and expenses charged appear reasonable and necessary.

3. The department reviews and pays fee requests meeting statutory prerequisites, including submission of necessary forms and documentation.

B. When questions or concerns regarding requests for payment are noted, the judge and/or the department have the authority to request additional information and to seek to resolve any discrepancies with an attorney before concurring in or authorizing fees for payment.

C. Questions or concerns relative to the accuracy, validity, or compliance of an attorney's requests with R.S. 46:460.21 and the standards promulgated herein, applicable Louisiana Supreme Court General Administrative Rules, and professional practice may be referred by the judge or department to the fee review panel constituted herein. The purpose of the panel shall be to provide independence, neutrality, clarity, and administrative efficiency in the resolution of questions or concerns and to promote programmatic and fiscal accountability in the administration of the system.

D. The fee review panel shall be composed of up to 11 experienced attorneys in child welfare proceedings who commit to impartial review of referred questions or concerns in accordance with the applicable standards and overall professional practice. Panel members shall serve without compensation. For any given referral, at least three attorneys from the panel who do not practice in the court from which the referral emanates and who have no conflict of interest relative to the case or attorney that would impair their impartiality shall review and make recommendations relative to the referral. Panel members shall elect a chair and vice-chair to be responsible for receiving referrals and facilitating timely review and response. Panel members shall agree upon the method of assigning cases for review. The department shall support the fee review panel by maintaining a log of referrals and recommendations.

E. Attorneys shall be nominated to serve on the panel by the Louisiana Council of Juvenile and Family Court Judges, the Louisiana Supreme Court, the Louisiana State Bar Association, the Louisiana District Attorneys Association, the Louisiana Indigent Defender Assistance Board, the Department of Social Services, the Mental Health Advocacy Service, and each of the four law schools of the state.

F. Members of the fee panel shall review whether a referred request for payment conforms to the applicable standards and is otherwise accurate and proper in accordance with professional practice. The review may include review of other requests for payment submitted by other attorneys in the same, or similar cases, a review of court files, review of agency records, and interviews of relevant parties, including the attorney submitting the request. When the reasonableness of hours is called into question, the panel shall refer to the Resource Guidelines for Improving Court Practice in Child Abuse and Neglect Cases published by the National Council of Juvenile and Family Court Judges for guidance.

G. Panel members shall agree to maintain the confidentiality of their review and deliberations. Panel members shall be bound by the same standards of confidentiality relative to individual case record information as the court and agency.

H. Upon determining that a request for payment is not in conformity with the applicable standards or is otherwise not accurate or proper in accordance with professional practice, the review panel shall advise the attorney submitting the request of the same in writing and specify the reasons for the determination. The attorney may provide a written response within 10 days of receipt of the determination. After reviewing the attorney's response, the fee panel shall make a recommendation to the appropriate court and the department regarding the referral and any adjustments to the fee requests it deems appropriate. There shall be no right of review or appeal to the recommendation by the panel members. A recommendation by the fee panel that a request for fees be reduced does not constitute a finding of wrongdoing.

I. The fee panel is authorized to recommend to the Supreme Court an attorney's suspension from appointment to child protection cases for a specified period of time and/or removal from the list of attorneys deemed eligible for appointment in such cases. The fee panel may also make referrals to the Attorney Disciplinary Board as appropriate.

J. Summary information regarding the operation of the fee panel, including referrals to and recommendations of the fee panel, shall be included in the annual report to the legislature pursuant to R.S. 46:460.21.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.21.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 32:

Ann S. Williamson  
Secretary

0511#025

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Support Enforcement Services Program  
Electronic Disbursement of Child Support  
(LAC 67:III.2518)

The Department of Social Services, Office of Family Support, Support Enforcement Services (SES) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 4, effective November 1, 2005. This Rule shall remain in effect for a period of 120 days.

Pursuant to Section 454A(g) of the Social Security Act, the agency is amending Chapter 25, Subchapter D, by adopting Section 2518, Electronic Disbursement of Child Support Payments, which allows for the electronic disbursement of child support payments. This Act allows the state to use its automated system for the effective and efficient collection and disbursement of support payments.

Emergency action in this matter is necessary to ensure that payments are received timely by eliminating postal delays caused by recent hurricanes. These changes are being made to avoid federal penalties and sanctions that could be imposed by the Administration for Children and Families, Office of Child Support Enforcement, the governing authority of the Support Enforcement Services Program in Louisiana.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 4. Support Enforcement Services

#### Chapter 25. Support Enforcement

#### Subchapter D. Collection and Distribution of Support Payments

#### §2518. Electronic Disbursement of Child Support Payments

A. Effective November 1, 2005, the agency will offer electronic disbursement of child support payments. Electronic disbursement of child support includes direct deposits to the custodial parent's bank account (checking or savings) or payments to a stored value card account.

B. A stored value card is a card-accessed account system where payments are electronically deposited into an account accessible for cash withdrawal or for credit purchases.

C. The fees associated with the use of the stored value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with section 454A(g) of the Social Security Act and PIQ-04-02.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson  
Secretary

0511#038

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Food Stamp Program, FITAP—Lump Sum Payments  
Resource Exclusion (LAC 67:III.1235 and 1949)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 2 and Subpart 3 effective November 01, 2005. This rule shall remain in effect for a period of 120 days.

Pursuant to P.L. 107-171, the Food Stamp Reauthorization Act of 2002 (also known as the Farm Bill), the agency will amend §1949 in the Food Stamp Program and §1235 in the Family Independence Temporary Assistance Program (FITAP) to exclude from countable resources, lump sum payments received by the household from the conversion of an allowable resource, or as compensation for the loss of an allowable resource, or which is earmarked for a specific purpose. Section 4107 of the Farm Bill gives the state the option to exclude certain types of resources that the State agency does not include for TANF purposes.

Emergency action in this matter is necessary, as thousands of Louisiana citizens have suffered extensive damage to their home and/or business property due to Hurricanes Katrina and Rita and have incurred enormous expense. Many will receive insurance settlements that may preclude the household's eligibility for Food Stamp benefits thereby creating imminent peril to public health and welfare. Therefore, it is the agency's intention to remove this barrier to Food Stamp eligibility and exclude these payments as a countable resource.

This resource exclusion currently applies to the Family Independence Temporary Assistance Program, although the Administrative Code does not specify this exclusion. That oversight is being corrected by means of this declaration.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 2. Family Independence Temporary Assistance Program

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

#### Subchapter B. Conditions of Eligibility

#### §1235. Resources

A. Assets are possessions which a household can convert to cash to meet needs. The maximum resource allowable for an assistance unit is \$2,000. All resources are considered except:

1. - 22. ...

23. lump sum payments received by the household from the conversion of an allowable resource, or as compensation for the loss of an allowable resource, or which is earmarked for a specific purpose. This exclusion shall apply for six months following receipt of the payment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 106-387, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 27:736 (May 2001), LR 27:866 (June 2001), LR 28:1031 (May 2002), LR 29:45(January 2003), LR 32:

#### Subpart 3. Food Stamps

#### Subchapter H. Resource Eligibility Standards

#### §1949. Exclusions from Resources

A. The following are excluded as a countable resource:

1. - 5. ...

6. lump sum payments received by the household from the conversion of an allowable resource, or as compensation for the loss of an allowable resource, or which is earmarked for a specific purpose. This exclusion shall apply for six months following receipt of the payment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:187 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003), LR 32:

Ann Silverberg Williamson  
Secretary

0511#043

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Family Support

Temporary Emergency Disaster Assistance Program  
(LAC 67.III.5583)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt §5583, Temporary Emergency Disaster Assistance Program. This Emergency Rule effective October 26, 2005, will remain in effect for a period of 120 days.

As a result of Hurricanes Katrina and Rita, there are an estimated 350,000 displaced individuals within the State of Louisiana who have urgent, unmet needs for basic human services as well as for intermediate and long-term assistance in restoring their lives and communities.

Pursuant to the authority granted to the Department by the Administration for Children and Families, the agency has adopted the Temporary Emergency Disaster Assistance Program as a new TANF Initiative. The program provides disaster emergency services to families with dependent children or pregnant women who are displaced because of disasters.

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5583. Temporary Emergency Disaster Assistance Program**

A. Effective October 26, 2005, the agency will enter into contracts to provide disaster emergency services to needy families with dependent children or pregnant women who are displaced because of disasters. The program will provide nonrecurring, short-term benefits or services, not to exceed four months, for subsistence needs.

B. These services meet the TANF goals to end dependence of needy families by promoting job preparation, work, and marriage, and to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to needy families with minor dependent children, or minor dependent children living with caretaker relatives within the fifth degree or pregnant women:

1. who are displaced citizens of parishes for which a major disaster has been declared under the Robert T. Stafford Disaster Relief and Assistance Act; and

2. whose income is at or below 200 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. The secretary may establish criteria whereby needy families are deemed to meet the financial eligibility requirements.

E. Services are considered non-assistance by the agency.

F. The program shall be effective for the parishes and time frames as designated by the secretary.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson  
Secretary

0511#026

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

2005/2006 Oyster Season Closure  
Sister Lake Public Oyster Seed Reservation

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S.

49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened with depletion as determined by the Department, and a Resolution adopted by the Wildlife and Fisheries Commission on August 4, 2005 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to close areas where significant spat catch has occurred with good probability of survival or if oyster resources and/or reefs are being adversely impacted, the Secretary hereby declares:

The 2005/2006 oyster season in the Sister (Caillou) Lake Public Oyster Seed Reservation, as described in Louisiana Revised Statutes (R.S.) 56:434.E, will close on Thursday, November 3, 2005 at one-half hour after sunset. Heavy harvest pressure has occurred during the first ten days of the 2005/2006 Sister Lake season and may threaten the long-term sustainability of the oyster reefs if allowed to continue. In addition, recent biological sampling has shown the occurrence of a successful spat set. These young oysters represent future oyster stocks and protecting spat is in the best interest of the oyster reefs.

Dwight Landreneau  
Secretary

0511#037

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Oyster Season—East of Mississippi River

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened with depletion as determined by the Department, and a Resolution adopted by the Wildlife and Fisheries Commission on August 4, 2005 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to close areas based on oyster mortality and adverse impacts to oyster reefs and to delay the season in areas where significant spat catch has occurred with good probability of survival, the Secretary hereby declares:

The 2005/2006 oyster season in the public oyster seed grounds located east of the Mississippi River, including the Bay Gardene Public Oyster Seed Reservation as described in Louisiana Revised Statutes (R.S.) 56:434.E and the Lake Borgne Public Oyster Seed Grounds as described in Louisiana Administrative Code (LAC) 76:VII.513, which was scheduled to open at one-half hour before sunrise on Monday, October 17, 2005 will be delayed until further notice. Hurricane-related oyster mortalities of approximately 60 percent in this area have significantly reduced oyster

abundance and the oyster reefs are threatened with depletion. In addition, biological sampling following Hurricanes Katrina and Rita have shown the occurrence of a successful spat set. Protection of these developing oysters will provide

opportunity to rebuild oyster stocks and delaying the season is in the best interest of the oyster resource.

Dwight Landreneau  
Secretary

0511#005