

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of Entertainment Industries Development

Louisiana Entertainment Industry Tax Credit Programs
(LAC 61:I.Chapter 16)

The Louisiana Department of Revenue, Department of Economic Development, Office of Business Development, and Governor's Office of Film and Television Development, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), adopt the following Rule for the Louisiana Entertainment Industry Tax Credit Programs, including: the Louisiana Motion Picture Investor Tax Credit Program; under the authority of R.S. 47:6007 and R.S. 47:1511. This Rule adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective upon publication and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a permanent Rule, whichever occurs first.

The Department of Revenue, Department of Economic Development, Office of Business Development, and Governor's Office of Film and Television Development have found an immediate need to provide rules regarding the creation and regulation of the Louisiana Motion Picture Investor Tax Credit Program to immediately provide for tax credits for the encouragement of the development in Louisiana of a strong capital and infrastructure base for motion picture film, videotape, digital and television program productions, in order to achieve an independent, self-supporting industry in this state, to encourage development of a Louisiana film, video, television and digital production and post-production infrastructure with state-of-the-art facilities, for the employment of residents of Louisiana in connection with the production of a motion picture. Without these Emergency Rules the public welfare may be harmed as the result of the loss of business investment and motion picture film, videotape, digital and television program productions, and infrastructure projects which would create economic growth in Louisiana, help drive the state's economy, and create or retain jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter A. Louisiana Motion Picture Investor Tax Credit Program

§1601. Purpose and Description of Louisiana Motion Picture Investor Tax Credit Program

A. The purpose of this program is to encourage the development in Louisiana of a strong capital and infrastructure base for motion picture film, videotape,

digital, and television program productions, in order to achieve an independent, self-supporting industry in this state, and to encourage development of a Louisiana film, video, television and digital production and post-production infrastructure with state-of-the-art facilities.

B. Approvals and certifications required for Louisiana Motion Picture Investor Tax Credits (Investor Tax Credits) are not to be considered as entitlements for companies locating or located in Louisiana and the Louisiana Office of Entertainment Industries Development and the Louisiana Department of Economic Development have the discretion to determine whether or not each particular investor and application meet the criteria for such approvals and certifications as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of such status.

C. Approvals of applications shall not result in a duplication of tax credits for the same assets. The tax credit granted for qualified expenditures on tangible assets shall not, in the aggregate, exceed the maximum applicable tax credit rate multiplied by the acquisition cost of the asset, as reflected in the first approved application for an investor tax credit.

D. General Description of the Louisiana Motion Picture Investment Tax Credit

1. Louisiana Motion Picture Investment Tax Credit. The Louisiana Motion Picture Investment Tax Credit is comprised of a percentage of an investor's base investment made and expended in the state in either a state-certified production or a state-certified infrastructure project.

2. Infrastructure Portion of the Investment Tax Credit. Additionally, for tax years beginning before January 1, 2008, each taxpayer whose base investment totals greater than \$300,000 will be allowed an additional credit of 15 percent of the base investment made by that taxpayer that is expended on a state-certified infrastructure project.

3. Payroll Portion of the Investment Tax Credit. Finally, each investor whose base investment includes expenditures on payroll for Louisiana residents employed in connection with a state-certified production shall be allowed an additional credit of 10 percent of such payroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

§1602. Definitions

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

Allocatee—an individual or entity that received an allocation of investment tax credits.

Allocator—an individual or entity that makes an allocation of investment tax credits.

Base Investment—the actual investment made and expended by:

a. a state-certified production in the state as production expenditures incurred in this state that are directly used in state-certified production or productions;

b. a person in the development of a state-certified infrastructure project. Infrastructure expenditures shall include expenditures for infrastructure project development, film and television production spaces, post-production equipment, facilities, system access and equipment for distribution companies domiciled within Louisiana, land acquisition and closing costs, construction costs, design and professional consulting fees associated with the state-certified infrastructure project, furniture, fixtures, equipment, financing costs and comprehensive workforce training, not including tuition. Infrastructure expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation or transfer of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the State-certified Infrastructure Project.

Commissioner—the Commissioner of the Division of Administration.

Department—the Louisiana Department of Economic Development, or its successor.

Developer—a person in the development of a state-certification infrastructure project.

Director—the director of the Louisiana Office of Entertainment Industries Development (the Office).

Division—the Division of Administration.

Expended by a State-Certified Production in the State [for purposes of R.S. 47:6007(B)(1)]—

a. in the case of tangible property, property which is acquired from a source within the state;

b. and in the case of services, shall mean procured from within the state and performed in the state;

c. that are provided by an individual or entity duly qualified to do business in Louisiana and offering such goods or services for sale in the ordinary course of its Louisiana business.

Louisiana Resident—residency shall be established if in exchange for employment with a motion picture production company the individual agrees in writing to file a Form IT 540, as a full year Louisiana resident, or Form IT 540B, as a part year resident, for his taxable year employed by the motion picture production company and to pay the Louisiana income tax shown thereon. *Resident* or *resident of Louisiana* means a natural person and, for the purpose of determining eligibility for the tax incentives, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

Office—the Office of Entertainment Industries Development.

Payroll Expended on Louisiana Residents—the full amount of salary, wages, or other compensation and related benefits actually paid to or on behalf of any Louisiana resident that renders services to the production within the State of Louisiana including union pension and welfare contributions and retirement benefits but shall not include federal and state taxes imposed solely on the employer, for example, the employer's share of Social Security.

Secretary—the Secretary of the Department of Economic Development.

Slate of Productions—more than one state-certified production being financed, produced or distributed by or on behalf of the same motion picture production company or an affiliate grouped together in such a way that the group meets the minimum in-state spend of \$300,000. If one project in the group is over \$300,000; then that project shall be considered an individual project and NO additional projects shall be added to that so as to earn tax credits for the slate.

State-Certified Infrastructure Project—an infrastructure project that meets the definition of a State of the Art Production Facility and is approved by the Office of Entertainment Industries Development, the Department of Economic Development and the Division of Administration. The term *infrastructure project* shall not include movie theaters or other commercial exhibition facilities.

State-Certified Production—a production approved by the Office of Entertainment Industries Development and the Department of Economic Development produced by a motion picture production company domiciled and headquartered in Louisiana which has a viable multi-market commercial distribution plan.

State of the Art Production Facility—a physical facility that provides all or substantially all of the goods and services necessary for completing the major activities of a production. The office has discretion to determine whether infrastructure projects are state of the art in accordance with industry needs and standards. The following list is illustrative of such facilities:

- a. Postproduction Editing Suites and Labs:
 - i. Avid Symphony Suites, Avid Xpress Deluxe Lab, Avid Media Composer Lab, Avid DS Nitris Lab;
 - ii. Final Cut Pro Labs;
- b. Recording Studios and Labs:
 - i. Postproduction Suites;
 - ii. Digidesign Pro Tools Labs;
 - iii. MIDI Lab;
 - iv. Analog Mix Lab;
 - v. Audiotronics Lab;
- c. Soundstages and Equipment:
 - i. Soundstages;
 - ii. ARRI 35mm Film Cameras, ARRI 16mm Film Cameras;
 - iii. Chapman Cranes;
 - iv. Lighting / Grip Lab;
 - v. Dubbing Stage and Greenscreen Area;
 - vi. High-Definition Cameras;
- d. Digital Media Production Labs:
 - i. Mac Audio or Animation Lab, Mac G5 Lab;
 - ii. PC Audio Lab;
 - iii. Game Development Labs;
 - iv. Animation Preproduction Lab;
 - v. 2D Animation Studio;
 - vi. Computer Animation Center;
- e. Miscellaneous: Film Processing Labs, Digital Transfer Services;
- f. music and sound studios should include mixing and recording studios featuring a stage large enough to accommodate a full orchestra for scoring;
- g. soundstages should include sound-isolated carpentry shops adjacent to stages, dressing rooms with

private bath and shower, washer-dryers, green rooms, hair and makeup, wardrobe rooms, rehearsal space, controls rooms and offices. Multiple load-in options including a large street-level freight elevator should be available to facilitate delivery and setup of materials. Screening rooms should also be included. Facilities should be capable of providing both fiber-optic and satellite connectivity for broadcasting live or pre-recorded content anywhere in the world. These technologies can also be used for conducting teleconferences or beaming "dailies" back to headquarters. High-speed broadband Internet access is also important. Soundstages, with a towering 35 to 45 foot grid height, are (ideally) column-free, sound-insulated, and offer unsurpassed loading and staging areas. They should be built to accommodate film, high-definition television (HDTV) and digital camera productions, with stages ranging from 120 feet wide, wired with a minimum of 9,000 amps of power and 300 to 200 tons of cooling.

Transferee—an individual or entity that receives a transfer of investor tax credits.

Transferor—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

§1603. Application for the Motion Picture Investor Tax Credit

A. An applicant for the motion picture investor tax credit shall submit an application for initial certification to the Office of Entertainment Industries Development that includes all of the information required by R.S. 47:6007 D(2)(a); and an application fee payable to the Department of Economic Development or the State of Louisiana shall be submitted with the application determined as provided in R.S. 47:6007 D(2)(b).

B. Rules of Application. The investor tax credit authorized by R.S. 47:6007 C(1) may be earned, transferred, allocated, and claimed as follows.

1. Individuals or entities (other than motion picture production companies) may earn investor tax credits pursuant to R.S. 47:6007 C(1).

2. Once investor tax credits are earned by an individual or entity, such individual or entity and any subsequent transferee may transfer or allocate the investor tax credits in one or more of the following ways:

a. transfer: by transferring or selling all or a portion of the investor tax credits to any individual or entity; or

b. allocation: if the investor tax credits are earned by, or allocated or transferred to, an entity not taxed as a corporation the entity may allocate the credit by issuing ownership interests to any individuals or other entities on such terms that are agreed to by the relevant parties and in accordance with the terms of the allocating entity's operating agreement or partnership agreement which terms may result in the allocation of up to 100 percent of the investor tax credits to any individual or entity regardless of the federal tax treatment of the allocation:

i. the allocating entity:

(a). may be treated as a "partnership" for federal or state tax purposes; or

(b). may be treated as an entity that is disregarded as an entity separate from its owners for federal or state tax purposes, and in which case, each holder may agree that it will not treat the allocating entity as a "partnership" or itself as a "partner" or the ownership interest in the allocating entity as a "partnership interest" for federal tax or state tax purposes.

3. A state-certified production or a state-certified infrastructure project earns tax credits when its actual expenditures are approved as qualifying expenditures pursuant to these rules. However, credits can not be applied against a tax or transferred until the expenditures are certified by the Department of Economic Development, the Office of Entertainment Industries Development and the Division of Administration (for infrastructure tax credits).

4.a. An owner of tax credits may apply the credits to offset an outstanding Louisiana income tax liability for any tax year beginning in the year that the investor initially earned the tax credit or in any year thereafter within the ten-year carryforward period.

b. In the case of tax credits owned (held) by an entity not taxed as a corporation, the credits shall be deemed to flow through or be allocated to partners or members at the end of the tax year in which the entity acquired the credits unless the partnership or membership agreement provides specifically for an earlier distribution during the tax year.

5. Any individual or entity shall be allowed to claim the investor tax credit authorized by R.S. 47:6007(C)(1) against its Louisiana income tax liability:

a. whether or not any such individual is a Louisiana resident; and

b. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana.

6. An Investor Tax Credit, in the hands of the taxpayer that earned the credit or received it by flow-through, cannot be used to eliminate any penalties and interest on overdue income taxes from prior tax years. However, an Investor Tax Credit that is purchased is treated as property and can be applied to penalties and interest on overdue income taxes from prior tax years pursuant to R.S. 47:1675(H)(1)(c). Penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid. The date of payment is the date that the Louisiana Department of Revenue receives a return from a taxpayer on which the Investor Tax Credits are claimed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

§1604. Certification of Investor Tax Credits

A. Preliminary Certification The office and the department shall issue preliminary certifications of productions and infrastructure projects. A preliminary certification shall be issued as follows.

1. To obtain the preliminary certification from the office and the department for a "state-certified infrastructure project" or for a "state-certified production or slate of productions" as required by R.S. 47:6007(B)(9) and (10), the applicant must submit a written request to the director and the secretary of the department requesting approval of the

production as a "state-certified production" or a state of the art production facility as a "state-certified infrastructure project" and setting forth the following information:

a. working title of the production or infrastructure project for which approval is requested;

b. name of the requesting production or infrastructure company;

c. name, telephone number, e-mail address and attesting signature of the requesting production or infrastructure company's contact person;

d. approximate beginning and ending date of production or construction in Louisiana;

e. Louisiana office address;

f. telephone number of requesting company's Louisiana office address;

g. estimated total production-related costs of production or total costs associated with the infrastructure project for which approval is requested;

h. estimated total amount of production-related costs to be expended in Louisiana in connection with the production for which approval is requested;

i. estimated percentage of each of pre-production, production, and post-production work to be performed in Louisiana in connection with the production for which approval is requested;

j. estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production for which approval is requested, excluding any employee to be paid in excess of \$1 million;

k. detailed preliminary budget;

l. for production seeking approval, a copy of script (including synopsis) and for infrastructure projects, a detailed business plan outlining the exact costs of what is proposed for the project;

m. list of principal creative elements such as principal cast, producer, director, music producer, and music supervisor; and

n. facts sufficient for the office and the department to determine each of the following:

i. that the requesting production company is a motion picture production company as defined in R.S. 47:6007(B)(5);

ii. that the requesting production company is domiciled and headquartered in Louisiana; and

iii. that the requesting production company has either a viable multi market distribution plan or a signed distribution agreement with either a major theatrical exhibitor, television network or cable television programmer for distribution of the production for which approval is requested.

2. Any applicant requesting certification of a production or an infrastructure project is required to reimburse the Office of Entertainment Industries Development and the Department of Economic Development for any audits required in relation to granting the credit.

3. The office and the department shall issue their written approval of a project as a "state-certified infrastructure project" or of a production as a "state-certified production" after receiving a complete application, all

supporting documents necessary to make a determination and the application fee with respect to such project or production that complies with these rules. In the alternative, if the office and the department determine that a request for approval of a project as a "state-certified infrastructure project" or of a production as a "state-certified production" received from a developer or production company is not in compliance with these rules, after receiving such request, the office and the department shall request in writing from the requesting developer or production company any information necessary in their determination for such request to comply with these rules. Upon receiving all of the requested additional information in writing from the developer or production company, and if the office and the department determine that the request for approval with respect to such project or production complies with these rules, the office and the department shall issue to the requesting developer or production company their written approval of the project as a "state-certified infrastructure project" or of a production as a "state-certified production."

B. Certifications

1. Prior to any certification of the expenditures of a state-certified production or state-certified infrastructure project and the issuance of any investor tax credits, the motion picture production company, with respect to state-certified productions, and the developer, with respect to state-certified infrastructure projects, shall submit to the Office of Entertainment Industries Development a cost report of production expenditures or infrastructure expenditures audited and certified by an independent certified public accountant as determined this rule. Either the Department of Economic Development or the Department of Revenue may audit the cost report submitted by the motion picture production company or developer. The following procedures set forth minimum standards for acceptability of the audit to be performed by a certified public accountant. The certified public accountant's report shall at a minimum, meet the following requirements.

a. The auditor auditing the report shall be a Certified Public Accountant licensed in the State of Louisiana and shall be an independent third party, not related to the producer or developer or any known potential investor eligible for tax credits.

b. The auditor's opinion must be addressed to the party who has engaged the auditor (e.g., directors of the production company or developer, or the producer of the production).

c. The auditor's name, address, and telephone number must be evident on the report.

d. The auditor's opinion must be dated as at the completion of the audit fieldwork.

e. The audit shall be performed in accordance with auditing standards generally accepted in the United States of America.

f. The auditor shall have demonstrated sufficient knowledge of accounting principles and practices generally recognized in the film and television industry.

2. After receiving a written request from an investor for certification of expenses and upon certification of the expenditures by the Office of Entertainment Industries Development, the Department of Economic Development and the Division of Administration (for infrastructure tax

credits), the office shall issue one original certificate of ownership of such investor signed by the director reflecting the investor's name, the dollar amount of investor tax credits earned by the investor pursuant to R.S. 47:6007(C) through the date of such request, the calendar or fiscal year in which the investor tax credits were earned by the investor, the state-certified infrastructure project or the state-certified production with respect to which the investor earned the investor tax credits, and the identifying number assigned to such state-certified infrastructure project, or state-certified production.

3. If the investor tax credits evidenced by a certificate of ownership are allocated, sold or transferred or allocated as provided herein, then concurrently with the submission of the notification required by R.S. 47:6007(C)(4), the transferor shall submit to the office the original certificate of ownership evidencing the investor tax credits being transferred or allocated. After receiving the original certificate of ownership evidencing the investor tax credits being transferred or allocated, the office shall issue to each transferee or allocatee indicated in the transferor's or allocator's notification a certificate of ownership signed by the director reflecting such transferee's or allocatee's name, the dollar amount of investor tax credits transferred or allocated to the transferee or allocatee, the calendar year in which the investor tax credits were originally earned by an investor pursuant to R.S. 47:6007(C), the state-certified infrastructure project or the state-certified production with respect to which such investor earned the investor tax credits, and the identifying number assigned to such state-certified infrastructure project or state-certified production. If the certificate of ownership that the transferor or allocator submits with its notification of transfer or allocation evidences more investor tax credits than actually transferred or allocated by the transferor or allocator, then the office shall also issue a certificate of ownership to the transferor or allocator signed by the director reflecting the transferor's or allocator's name, the transferor's or allocator's remaining investor tax credit balance, the calendar or fiscal year in which the investor tax credits were originally earned by an investor pursuant to R.S. 47:6007(C), the state-certified production with respect to which such investor earned the investor tax credits, and the identifying number assigned to such state-certified production. Any person or entity engaged in the business of buying and reselling tax credits may elect to maintain its certificate of ownership on file with the office, such that it need not surrender, and have reissued, its certificate of ownership each time it sells a tax credit. In such cases, the office will issue comports certificates of ownership to transferees or allocates designated by the transferor or allocator in writing until such time as the tax credits represented in the transferor's or allocator's original certificate have been exhausted.

4. Any taxpayer claiming investor tax credits against its Louisiana income tax liability shall submit to the Louisiana Department of Revenue with its Louisiana income tax return for the year in which the taxpayer is claiming the investor tax credits, an original certificate of ownership issued by the office pursuant to this rule evidencing the dollar amount of the investor tax credits being claimed; provided, however, if a taxpayer is claiming an amount of

investor tax credits less than that evidenced by the certificate of ownership, then, concurrently with filing its Louisiana tax return, such taxpayer shall request that the office issue to it a certificate of ownership evidencing the amount of investor tax credits to be claimed and a certificate of ownership evidencing the balance of such taxpayer's investor tax credits. After receipt of such request, the office shall issue the certificates of ownership signed by the director reflecting, in addition to the amount of investor tax credits, the taxpayer's name, the calendar or fiscal year in which the investor tax credits were originally earned by an investor pursuant to R.S. 47:6007(C), the state-certified production with respect to which such investor earned the investor tax credits, and the identifying number assigned to such state-certified production.

5. The failure of the office to issue a timely certificate of ownership in accordance with this rule shall not:

a. void or otherwise affect, in any way, the legality or validity of any transfer of investor tax credits;

b. prohibit any Louisiana taxpayer from claiming investor tax credits against its Louisiana income tax liability if the investor tax credits are otherwise transferred or claimed in accordance with R.S. 47: 6007 and these rules; or

c. result in any recapture, forfeiture or other disallowance of investor tax credits under R.S. 47:6007(E) or (F) or otherwise.

6. Beginning January 1, 2006, for state-certified productions, expenditures shall be certified no more than twice during the duration of a state-certified production unless the motion picture production company submits a fee of \$250 per additional certification to the Office of Entertainment Industries Development and the Department of Economic Development for the costs of any additional certifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

§1605. Base Investment Calculation

A. For purposes of R.S. 47:6007(C)(1), the total base investment of a state-certified production, slate of productions or a state-certified infrastructure project shall be calculated by including all amounts expended in the state constituting base investment if each such investment constituting a base investment is made within the period beginning 12 calendar months before and ending 12 calendar months after the date as of which the state-certified production, slate of productions or state-certified infrastructure project of the company for which base investment is being calculated was approved as a state-certified production, slate of productions or a state-certified infrastructure project by the office and the department. (moved to definition of slate of productions). However, no state-certified production or state-certified infrastructure project expenditure shall be attributed to more than one production or project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

§1606. Infrastructure Portion of the Investor Tax Credit

A. For infrastructure projects, the department and the office may grant inventor tax credits for multiple purpose immovable and moveable assets as provided by this Section.

1. As stated in Subsection A of §1601 and with the intent of Act 456 of the 2005 Regular session as expressed in R.S 6007(D)(1), infrastructure project tax credits are granted to encourage development of a strong industry base for motion picture production. Consistent with this intent and purpose, the office and the department may grant tax credits for expenditures on assets that are not unique to the production of motion pictures. They may also grant tax credits for assets that are moveable. However, for any applicant requesting approval as a state-certified infrastructure project that includes either multiple purpose assets or moveable assets, the certification shall include and shall state terms and conditions as provided by Paragraphs 2 and 3 of this Subsection.

2. The office and department have the discretion to determine that real property or fixed assets having uses other than supporting a state of the art production facility may be a necessary component of a state-certified infrastructure project. In instances where applications include such multiple purpose real property or other fixed assets, the office and department shall require the applicant to provide assurances that such assets will exclusively support the approved film infrastructure project and that the applicant will not divert the use of the assets to purposes that do not promote or provide for the productions within the state of Louisiana. Such assurances shall be secured by appropriate agreements, including, but not limited to, a requirement of approval prior to sale of such assets; a requirement for a minimum number of years before such assets may be transferred to a different owner; limitations on transferability of the tax credits for current or future holders, a reserve fund that may be re-captured by the state; or a structured release of tax credits.

3. The office and department require assurances of the applicant for a state-certified infrastructure project that moveable assets shall remain in Louisiana and be used in the production of motion pictures or other visual media productions within the state of Louisiana for not less than 80 percent of the asset's useful life. Such assurances shall be secured by appropriate agreements, including, but not limited to, a requirement of approval prior to sale of such assets; a requirement for a minimum number of years before such assets may be transferred to a different owner; limitations on transferability of the tax credits for current or future holders, a reserve fund that may be re-captured by the state; or a structured release of tax credits.

4. Any conditions to meet the requirements to this Subsection shall be explicitly stated in the certification issued for the project.

B. Prior to the issuance of any investor tax credits related to a state-certified infrastructure project, at least \$5,000,000 or 25 percent (for project's whose approved costs are less than \$20,000,000) of the project's construction and/or associated approved costs outlined in its Infrastructure Tax Credit Application(s) must be expended on the state-certified infrastructure project or the applicant shall provide in writing adequate legal and financial assurances that if credits

are issued, they will have a viable financial source from which to recapture the face value of the credits that have been certified.

C. For infrastructure projects to receive the 15 percent credit in RS 6007(C)(1)(b)(iii), base investments must be made and expended prior to January 1, 2008. In order to provide a reasonable opportunity to complete projects started prior to this date, the department and office may consider construction work in progress as be eligible for tax credits as follows.

1. The office and department may deem work in progress as actual expenditures if all the following conditions are met.

a. There is a binding contract for the completion of the work.

b. The contract includes a completion bond.

c. The work will meet the requirements as a qualified expenditure once completed.

d. Work equal to at least 1/3 of the value of the contract is complete by January 1, 2008.

2. If a project meets the requirements of Paragraph 1 of this Subsection, then tax credits for qualifying actual expenditures may be issued. However the remaining tax credits for a project approved as construction work in progress shall not be issued until the remaining qualifying actual expenditures are incurred and the project is complete and has been accepted from the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

§1607. Payroll Portion of the Investor Tax Credit

A. To the extent base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit of 10 percent of such payroll. However, if the payroll to any one person exceeds \$1 million, this additional credit shall exclude any salary for that person that exceeds \$1 million.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industries Development, LR 33:

Sherri McConnell
Director

0703#061

DECLARATION OF EMERGENCY

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

Non-Processing Transfer Station Standards
(LAC 33:VII.115, 707, and 708)(SW045E)

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 provide operating standards for non-processing transfer stations that do not fall under existing solid waste regulations.

This Emergency Rule clearly defines solid waste collection facilities and transfer stations (processing and non-processing), and establishes operating standards for these facilities. There are currently several solid waste transfer operations in Louisiana that do not fall under any existing regulations, and therefore, are not regulated. These facilities are operating without having properly notified the department of their activities and without any regulatory operational standards, posing a potential threat to human health and the environment. As a result, the department has received and investigated citizen complaints regarding these operations. This Emergency Rule clearly and specifically identifies and defines these types of operations and provides specific operational requirements. This Emergency Rule provides an enforceable set of standards for these operations to prevent harm to human health and the environment.

This Emergency Rule is effective on March 20, 2007, 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 SW045E you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx, 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; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Collection Facility—a facility, at which one or more containers are located, that is used to accumulate solid waste generated by and delivered by more than one household or commercial establishment for pickup by a transporter, including, but not limited to, facilities typically located in rural areas where garbage collection does not occur. This definition does not include containers that receive only solid waste generated on property that is contiguous with the property on which the container is located (e.g., containers located at and receiving solid waste only from a multiunit dwelling or a commercial establishment or an industrial establishment).

* * *

Non-Processing Transfer Station—a solid waste facility where solid waste is transferred from collection vehicles to other vehicles for transportation without processing.

* * *

Pickup Station—repealed.

* * *

Transfer Station—repealed.

Transfer Station (Non-Processing)—See Non-Processing Transfer Station.

Transfer Station (Processing)—a Type I-A or II-A solid waste processing facility where solid waste is transferred from collection vehicles, processed, and placed in other vehicles for transportation (e.g., a facility that separates recyclables from industrial or putrescible waste streams).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 7. Solid Waste Standards

Subchapter A. General Standards

§707. Standards Governing Collection Facilities for Solid Waste

A. Owners/operators of collection facilities shall comply with existing local zoning, siting, and comprehensive land-use regulations and ordinances. The owner/operator shall be responsible for the management of the collection facility, in accordance with this Section.

B. Containers shall provide complete containment of waste, thereby preventing litter, discharges, odor, and other pollution of adjoining areas. Collection facilities shall meet the standards found in LAC 33:VII.703.A. They shall also occupy sufficient land so that vehicles using the facility will not adversely affect traffic or otherwise constitute a hazard or endanger public safety.

C. All waste accumulated or stored at the facility shall remain in containers that meet the following requirements.

1. Containers shall provide sufficient capacity to contain waste and prevent litter.

2. Containers shall be designed, constructed, and operated to keep out water and prevent leakage.

3. Containers shall be constructed and maintained to minimize odors and access by rodents and insects.

4. Containers shall be emptied before accumulation becomes a nuisance, a health hazard, or a detriment to the environment as determined by the administrative authority.

D. Inspections of collection facilities shall be made by the owner/operator at a minimum of twice per week, looking for cleanliness of the site, overfill of containers, closed lids, leaking containers, and deterioration of containers. Inspections shall be documented, and the records shall be maintained and available for inspection within 24 hours of request.

E. No processing or disposal shall occur at a collection facility.

F. Removal of all remaining wastes to a permitted facility shall occur at closure of a collection facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2609 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§708. Standards Governing Non-Processing Transfer Stations for Solid Waste

A. Owners/operators of non-processing transfer stations shall:

1. provide advanced written notice, at least 30 days prior to construction, to the parish governing authority whose jurisdiction may be affected, of the intent to operate a non-processing transfer station or other type of facility for the offloading and/or transloading of solid waste destined for disposal;

2. notify the Office of Environmental Services, Waste Permits Division, in accordance with LAC 33:VII.503;

3. comply with existing local zoning, siting, and comprehensive land-use regulations and ordinances; and

4. maintain access roads or waterways in a manner that shall meet the demands of the facility and are designed to avoid, to the extent practicable, congestion, sharp turns, obstructions, or other hazards conducive to accidents. The surface roadways shall be adequate to withstand the weight of transportation vehicles.

B. New facilities in which construction has commenced after June 20, 2007, shall comply with the buffer zone requirement of not less than 200 feet between the facility and the property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowner and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish in which the adjoining landowner's property is located. The affidavit shall be maintained with the records of the facility.

C. No processing or disposal shall occur at a non-processing transfer station.

D. Facilities shall also comply with LAC 33:VII.703 and 705.

E. Owners/operators shall have the personnel necessary to achieve the operational requirements of the facility.

F. Facilities shall have control measures that prevent unauthorized ingress or egress, except by willful entry. During operating hours, each facility entry point shall be continuously monitored, manned, or locked. During non-operating hours, each facility entry point shall be locked.

G. Each tipping area shall be constructed and operated to prevent litter from leaving the tipping area. This area shall be constructed of sufficiently low permeable material (i.e., concrete or asphalt) to prevent soil and groundwater contamination.

H. Facilities shall be inspected by the owner/operator at the end of each operating day, and litter or waste shall be cleaned up and placed into the last transportation vehicle. These inspections shall be documented, and the inspection

records shall be retained in accordance with Subsection J of this Section.

I. Odors shall be controlled by the best means practicable. The non-processing transfer stations shall be cleaned daily by an appropriate method to minimize odors and nuisance conditions.

J. All facility records shall be maintained and available for inspection within 24 hours of request. These records shall be maintained for the life of the facility and shall be retained for at least three years after closure.

K. The owner/operator of a non-processing transfer station may construct a drop-off area at the non-processing transfer station site such that certain activities can be conducted. No industrial waste shall be accepted, and materials shall be managed in accordance with LAC 33:VII.703, 707, and Subsections F, G, I, K, and L of this Section. These areas are intended for the use of commercial facilities and residential solid waste. Collection and storage of the following wastes are allowed, provided it does not become a nuisance, a health hazard, or a detriment to the environment as determined by the administrative authority:

1. white goods;
2. presorted yard trash; or
3. household recyclable materials.

L. Discharges from the facility shall be controlled and shall conform to all applicable state and federal laws.

M. All waste shall be removed to a permitted facility at closure. Notification of closure shall be submitted to the Office of Environmental Services, Waste Permits Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

Mike D. McDaniel, Ph.D.
Secretary

0703#080

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies
Non-Rural Community Hospitals and
Federally Mandated Statutory Hospitals
(LAC 50:V.307, 308 and 309)

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 an Emergency Rule to repeal and replace all Rules governing disproportionate share hospital payment

methodologies (*Louisiana Register*; Volume 31, Number 6). In compliance with Act 182 and Act 323 of the 2005 Regular Session, the June 20, 2005 Emergency Rule was amended to establish provisions for provider fees levied on hospitals as a result of the Healthcare Affordability Act (*Louisiana Register*; Volume 31, Number 7) and to revise the definition of a small rural hospital (*Louisiana Register*; Volume 31, Number 9). The June 20, 2005 Rule was subsequently amended to incorporate the provisions of the July 1, 2005 and September 1, 2005 Emergency Rules (*Louisiana Register*; Volume 31, Number 10).

The October 25, 2005 Emergency Rule was amended to: 1) change the provisions governing DSH payments to other uninsured hospitals; 2) establish provisions governing payments to private community hospitals for services rendered to displaced, uninsured citizens from mandatory evacuation parishes affected by Hurricanes Katrina and Rita; 3) change the provisions governing DSH payments to high uninsured hospitals and to establish provisions governing payments to public community hospitals (*Louisiana Register*; Volume 32, Number 7 and 4) revise the provisions governing disproportionate share hospital payments to non-rural community hospitals as a result of the allocation of additional funds by the Legislature during the 2006 Regular Session (*Louisiana Register*; Volume 32, Number 9). The department subsequently amended the October 25, 2005 Emergency Rule to incorporate the provisions of the June 28, 2006 and September 15, 2006 Emergency Rules (*Louisiana Register*; Volume 32, Number 10). The October 23, 2006 Emergency Rule was amended to revise the definition of a small rural hospital (*Louisiana Register*; Volume 33, Number 1) and to incorporate the provisions of the December 18, 2006 Emergency Rule (*Louisiana Register*; Volume 33 Number 2). The department now proposes to amend the February 21, 2007 Emergency Rule to repeal the provisions governing private community hospitals and to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2006-2007 may also qualify in the federally mandated statutory hospital category. This action is being taken to promote the public health and welfare and to assure that hospitals are adequately compensated for their uncompensated care. It is estimated that implementation of this proposed Emergency Rule will have no fiscal impact for state fiscal year 2006-2007.

Effective March 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the February 21, 2007 Emergency Rule governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§307. Private Community Hospitals

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§308. Non-Rural Community Hospitals – SFY 2007

A. Definitions

Non-Rural Community Hospital—A non-state hospital that does not receive disproportionate share payments under any other qualification category except the federally mandated statutory hospital category. These hospitals may be either publicly or privately owned. In addition, psychiatric, rehabilitation and long term hospitals may qualify for this category.

B. - H. ...

I. Hospitals qualifying as non-rural community hospitals in state fiscal year 2006-2007 may also qualify in the federally mandated statutory hospital category.

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 33:

§309. Federally Mandated Statutory Hospitals

A. Definitions

Federally Mandated Statutory Hospital—a hospital that meets the federal DSH statutory utilization requirements in §303.A.4.a-b.ii.

B. - D.2. ...

E. The federally mandated statutory hospital category may also include hospitals qualifying as non-rural community hospitals in state fiscal year 2006-2007.

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 33:

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 Jerry Phillips at Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all 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

0703#012

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment
Psychological and Behavioral Services
Reimbursement Rate Increase
(LAC 50:XV.7701, 7703, and 7707)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.7707 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 provides coverage and reimbursement of psychological and behavioral services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Reimbursement for these services is based on 70 percent of the allowable rate on the 2002 Medicare Fee Schedule for Area 1 (*Louisiana Register*, Volume 29, Number 2). As a result of the allocation of additional funds by the Legislature during the 2006 Regular Session, the bureau promulgated an Emergency Rule to increase the reimbursement fees for psychological and behavioral services in the EPSDT program (*Louisiana Register*, Volume 33, Number 1). This Emergency Rule is being promulgated to continue the provisions of the December 18, 2006 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to EPSDT psychological and behavioral services by encouraging the continued participation of psychological and behavioral services providers in the Medicaid Program.

Effective for dates of service on or after April 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology to increase the reimbursement rates for EPSDT psychological and behavioral services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

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

Chapter 77. Psychological and Behavioral Services

§7701. Recipient Criteria

A. In order to be eligible for services, a Medicaid recipient must be under the age of 21 and meet one of the following criteria:

1. - 4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:40 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:

§7703. Covered Services

A. The following services are covered under EPSDT psychological and behavioral services:

1. necessary evaluations, psychiatric diagnostic interview examination or psychological testing;

2. family psychotherapy (with the patient present); and

3. individual psychotherapy.

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 29:180 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:

§7707. Reimbursement Methodology

A. Effective for dates of service on or after December 18, 2006, reimbursement for EPSDT psychological and behavioral services shall be based on 80 percent of the allowable rate on the 2006 Medicare Fee Schedule for Region 99.

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 29:40 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:9 (January 2007), LR 33:

Implementation of the provisions 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 Jerry Phillips, 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

0703#072

DECLARATION OF EMERGENCY

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

Nursing Facilities—Evacuation
and Temporary Sheltering Costs
(LAC 50:VII.1319)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:VII.1319 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 adopted a Rule to establish a prospective payment system for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology (*Louisiana Register*, Volume 28, Number 8). The August 20, 2002 Rule was subsequently amended to adopt provisions governing a quarterly adjustment of individual nursing facility rates based on overall case mix and allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (*Louisiana Register*, Volume 32, Number 12).

Act 540 of the 2006 Regular Session of the Louisiana Legislature directed the department, in consultation with the Governor's Office of Homeland Security, to adopt provisions

governing emergency preparedness requirements for nursing facilities, including facility-specific reimbursement for documented and allowable evacuation and temporary sheltering costs of a Medicaid-certified nursing facility. In compliance with the directives of Act 540, the department proposes to adopt provisions governing the reimbursement methodology for nursing facilities to provide for the facility-specific reimbursement of evacuation and temporary sheltering costs of Medicaid-certified nursing facilities.

This action is being taken to prevent imminent peril to the health and well-being of nursing facility residents who may be evacuated as a result of disasters or other emergencies. It is anticipated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2006-2007.

Effective March 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1319. Evacuation and Temporary Sheltering Costs

A. Nursing facilities required to participate in an evacuation, as directed by the appropriate parish or state official, or which act as a host shelter site may be entitled to reimbursement of its documented and allowable evacuation and temporary sheltering costs.

1. The expense incurred must be in excess of any existing or anticipated reimbursement from any other sources, including the Federal Emergency Management Agency (FEMA) or its successor.

2. Nursing facilities must first apply for evacuation or sheltering reimbursement from all other sources and request that the department apply for FEMA assistance on their behalf.

3. Nursing facilities must submit expense and reimbursement documentation directly related to the evacuation or temporary sheltering of Medicaid nursing home residents to the department.

B. Eligible Expenses. Expenses eligible for reimbursement must occur as a result of an evacuation and be reasonable, necessary, and proper. Eligible expenses are subject to audit at the department's discretion and may include the following.

1. Evacuation Expenses. Evacuation expenses include expenses from the date of evacuation to the date of arrival at a temporary shelter or another nursing facility. Evacuation expenses include:

a. resident transportation and lodging expenses during travel;

b. nursing staff expenses when accompanying residents, including:

i. transportation;

ii. lodging; and

iii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented;

(a). the direct care expense increase must be based on a comparison to the average of the previous two

pay periods or other period comparisons determined acceptable by the department;

c. any additional allowable costs as defined in the CMS Publication 15-1 that are directly related to the evacuation and that would normally be allowed under the nursing facility case-mix rate.

2. Non-nursing Facility Temporary Sheltering Expenses. Non-nursing facility temporary sheltering expenses include expenses from the date the Medicaid residents arrive at a non-nursing facility temporary shelter to the date all Medicaid residents leave the shelter. A non-nursing facility temporary shelter includes shelters that are not part of a licensed nursing facility and are not billing for the residents under the Medicaid case-mix reimbursement system or any other Medicaid reimbursement system. Non-nursing facility temporary sheltering expenses may include:

a. additional nursing staff expenses including:

i. lodging; and

ii. additional direct care expenses, when a direct care expense increase of 10 percent or more is documented;

(a). the direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department;

b. care-related expenses as defined in the nursing facility case-mix rate system and incurred in excess of care-related expenses prior to the evacuation;

c. additional medically necessary equipment such as beds and portable ventilators that are not available from the evacuating nursing facility and are rented or purchased specifically for the temporary sheltered residents; and

i. these expenses will be capped at a daily rental fee not to exceed the total purchase price of the item;

ii. the allowable daily rental fee will be determined by the department;

d. any additional allowable costs as defined in the CMS Publication 15-1 that are directly related to the temporary sheltering and that would normally be allowed under the nursing facility case-mix rate.

3. Host Nursing Facility Temporary Sheltering Expenses. Host nursing facility temporary sheltering expenses include expenses from the date the Medicaid residents are admitted to a licensed nursing facility to the date all temporary sheltered Medicaid residents are discharged from the nursing facility, not to exceed a six-month period.

a. The host nursing facility shall bill for the residents under Medicaid's case-mix reimbursement system.

b. Additional direct care expenses may be submitted when a direct care expense increase of 10 percent or more is documented.

i. The direct care expense increase must be based on a comparison to the average of the previous two pay periods or other period comparisons determined acceptable by the department.

C. Payment of Eligible Expenses

1. For payment purposes, total eligible Medicaid expenses will be the sum of non resident-specific eligible expenses multiplied by the facility's Medicaid occupancy percentage plus Medicaid resident-specific expenses.

a. If Medicaid occupancy is not easily verified using the evacuation resident listing, the Medicaid

occupancy from the most recently filed cost report will be used.

2. Payments shall be made as quarterly lump-sum payments until all eligible expenses have been submitted and paid. Eligible expense documentation must be submitted to the department by the end of each calendar quarter.

3. All eligible expenses documented and allowed under §1319. will be removed from allowable expense when the nursing facility's Medicaid cost report is filed. These expenses will not be included in the allowable cost used to set case-mix reimbursement rates in future years.

a. Equipment purchases that are reimbursed on a rental rate under §1319.B.2.c may have their remaining basis included as allowable cost on future costs reports provided that the equipment is in the nursing facility and being used. If the remaining basis requires capitalization under CMS Publication 15-1 guidelines, then depreciation will be recognized.

4. Payments shall remain under the upper payment limit cap for nursing facilities.

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 33:

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 Jerry Phillips, 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

0703#071

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office for Citizens with Developmental Disabilities

Home and Community Based Services Waivers New Opportunities Waiver—Emergency Opportunities (LAC 50:XXI.13707)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.13707 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:95(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 Appropriations Bill of the 2004 Regular Session of the Legislature allocated funds for the establishment of 66

emergency slots for the New Opportunities Waiver (NOW) program and mandated the development and enforcement of rules established under the Administrative Procedure Act to create an equitable and precise methodology for defining an emergency and the issuance of such slots. The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule that established the provisions governing emergency waiver opportunities. In addition, the bureau repealed the rules governing programmatic allocation of MR/DD Waiver slots and adopted those provisions to govern the programmatic allocation of waiver opportunities for NOW (*Louisiana Register*, Volume 30, Number 8). Subsequently, the bureau amended the August 20, 2004 Rule to clarify the provisions governing allocation of waiver opportunities for persons transitioning from publicly operated to private ICF-MR facilities (*Louisiana Register*, Volume 31, Number 11). The department now proposes to amend the provisions of the November 20, 2005 Rule to create an additional 100 emergency waiver opportunities.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities by facilitating access to waiver services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,414,652 for state fiscal year 2006-2007.

Effective March 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the programmatic allocation of waiver opportunities in the New Opportunities Waiver.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13707. Programmatic Allocation of Waiver Opportunities

A. - C.6. ...

7. One hundred and sixty-six waiver opportunities shall be used for qualifying individuals with developmental disabilities who require emergency waiver services. In the event that a waiver opportunity is vacated, the opportunity will be returned to the emergency pool for support planning based on the process for prioritization. Once the 166 waiver opportunities are filled, then supports and services based on the priority determination system will be identified and addressed through other resources currently available for individuals with developmental disabilities.

C.8. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She 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

0703#013

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Office of the Secretary
Office for Citizens with Developmental Disabilities
and
Division of Long Term Supports and Services**

**Home and Community Based Services Waivers
Termination of Services for Displaced Recipients
(LAC 50:XXI.301)**

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services adopts LAC 50:XXI.301 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is being 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 adopted provisions governing eligibility for home and community-based services waivers (*Louisiana Register*, Volume 24, Number 3). The Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services adopted provisions governing the termination of services and limited retention of waiver opportunities for waiver recipients displaced by Hurricanes Katrina and Rita (*Louisiana Register*, Volume 32, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2006 Emergency Rule. This action is being taken to avoid federal sanctions for failure to comply with federal requirements to assure the health and welfare of recipients of home and community-based waiver services.

Effective April 18, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services adopts the following provisions governing the eligibility for home and community-based waiver services.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services
Waivers
Subpart 1. General Provisions
Chapter 3. Eligibility
§301. Termination of Coverage for Displaced
Recipients**

A. Effective July 1, 2006, waiver recipients who have been displaced by Hurricanes Katrina or Rita and are currently residing in other states will no longer be able to

receive waiver services under the Louisiana Medicaid Program.

B. This termination of coverage is applicable to recipients receiving services in the following home and community-based waivers:

1. the New Opportunities Waiver;
2. Children's Choice;
3. the Elderly and Disabled Adult Waiver; and
4. the Adult Day Health Care Waiver.

C. If the individual returns to live in Louisiana on or before June 2008, he/she must contact the department to report his/her address and to request that waiver services be restarted.

D. The individual's name will be placed on a preferred registry with other hurricane evacuees who have returned to live in Louisiana and requested that their waiver services be restarted.

E. Waiver opportunities shall be offered to individuals on the preferred registry on a first come, first served basis.

1. The first available waiver opportunity shall be offered to an individual on this registry based on the date that the request to restart services was received.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services, LR 33:

Implementation of this Emergency Rule is contingent upon approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P. O. Box 3117, Baton Rouge, LA 70821-3117 or Hugh Eley, Division of Long Term Supports and Services, P.O. Box 3767, Baton Rouge, LA 70821-3767. They are 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

0703#073

EMERGENCY RULE

**Department of Health and Hospitals
Office of the Secretary
Office of Aging and Adult Services**

**Home and Community Based Services Waivers
Adult Day Health Care
(LAC 50:XXI.Chapters 21, 23 and 27)**

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2101, 2103, 2107, 2109, 2313, 2317 and Chapter 27 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 adopted provisions governing home and community-based waiver services for adult day health care (*Louisiana Register*, Volume 30, Number 9). The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver Request for Services Registry to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) (*Louisiana Register*, Volume 32, Number 12). The department now proposes to amend the September 20, 2004 Rule to: 1) redefine the target population; 2) establish provisions governing placement on the request for services registry; 3) clarify the comprehensive plan of care requirements; and 4) establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver.

This action is being taken to avoid federal sanctions which may result from not having provisions to clearly define the ADHC target population and admission and discharge criteria. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective March 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the September 20, 2004 Rule governing the Adult Day Health Care Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based

Services Waivers

Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2101. Introduction

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2103. Program Description

A. An Adult Day Health Care Waiver Program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired.

B. The target population for the ADHC Waiver Program is individuals who meet Medicaid financial eligibility

requirements, nursing facility level of care requirements and are at imminent risk of nursing facility placement.

1. These individuals must be 65 years old or older, or 22 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria.

C. This program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutionalization, allowing them to remain in their own homes and communities.

D. Goals

1. Adult Day Health Care programs work to:

a. promote the individual's maximum level of independence;

b. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;

c. restore and rehabilitate the individual to the highest possible level of functioning;

d. provide support and education for families and other caregivers;

e. foster socialization and peer interaction;

f. serve as an integral part of the community services network and the long-term care continuum of services.

2. The long-range goal for all adult day health care participants is the delay or prevention of 24-hour care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2107. Request for Services Registry

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Adult Day Health Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Persons who desire placement on the ADHC Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only persons who meet these criteria will be added to the registry.

C. Persons currently on the ADHC Waiver registry will be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only persons who meet these criteria will remain on the registry. Persons currently on the registry who do not meet these criteria will be removed.

D. The department may remove a person from the registry for failure to comply with the department's rules, policies and procedures.

E. A person who does not meet the criteria for, or who is removed from the registry may appeal the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to 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 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary,

Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 33:

§2109. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those persons who have indicated that they are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Chapter 23. Provider Participation

§2313. Comprehensive Plan of Care (CPOC)

A. ...

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the CPOC. Comprehensive plans of care must be completed and submitted timely in accordance with DHH policy and procedures.

C. The ADHC provider shall complete a CPOC which shall contain the type and number of services, including waiver and all other services, necessary to maintain the waiver recipient safely in 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 30:2040 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2317. Reporting Requirements

A. ADHC facilities are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. ADHC facilities are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Chapter 27. Admission and Discharge Criteria

§2701. Admission Criteria

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;

2. initial and continued eligibility for a nursing facility level of care;

3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual;

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services; and

5. the individual is either in a nursing facility or is at imminent risk of nursing facility placement.

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 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2703. Admission Denial and Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The individual is not at imminent risk of nursing facility placement.

4. The recipient resides in another state or has a change of residence to another state.

5. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay or a stay that is longer than 90 consecutive days.

6. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services during a period of 30 consecutive days.

7. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.

8. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, 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

0703#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Home and Community Based Services Waivers
Elderly and Disabled Adult Waiver
Request for Services Registry
(LAC 50:XXI.8103)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.8103 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, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for elderly and disabled adults in LAC 50:XXI.Chapters 81-89 (*Louisiana Register*, Volume 30, Number 8). The Division of Long Term Supports and Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to: 1) eliminate the duplication of like services currently provided in the waiver and as a Medicaid State Plan service; 2) define the existing service package and establish new services; and 3) revise the methodology for allocation of waiver opportunities (*Louisiana Register*, Volume 32, Number 7). The department now proposes to amend the August 20, 2004 Rule to establish provisions governing placement on the request for services registry.

This action is being taken to promote the well-being of Louisiana citizens by facilitating access to home and community based services through the adoption of placement provisions for the EDA Waiver request for services registry. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective March 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the August 20, 2004 Rule governing the Elderly and Disabled Adult Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waiver

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 81. General Provisions

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry," for the Elderly and Disabled Adult Waiver. An individual who wishes to have his or her

name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Persons who desire placement on the EDA Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only persons who meet these criteria will be added to the registry.

C. Persons currently on the EDA Waiver registry will be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only persons who meet these criteria will remain on the registry. Persons currently on the registry who do not meet these criteria will be removed.

D. The department may remove a person from the registry for failure to comply with the Department's rules, policies and procedures.

E. A person who does not meet the criteria for, or who is removed from the registry may appeal the decision.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 28:835 (April 2002), amended LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, 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

0703#070

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF Homeless Initiative (LAC 67:III.5589)

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 LAC 67:III, Subpart 15, Chapter 55, §5589, Homeless Initiative as a new TANF Initiative. This Emergency Rule effective March 31, 2007, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective December 1, 2006, since it will expire before the final Rule takes effect. (The final Rule will be published in the April 2007 issue.)

Pursuant to Act 17 of the 2006 Regular Session of the Louisiana Legislature, the agency is adopting the Homeless Initiative to end the cycle of homelessness in Louisiana by stabilizing homeless families and aiding these families in establishing permanent housing and becoming self-sufficient.

The authorization for emergency action in this matter is contained in Act 17 of the 2006 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5589. Homeless Initiative

A. Effective December 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to end the cycle of homelessness in Louisiana by providing services to homeless families which include but are not limited to comprehensive case management, educational and employment opportunities for adult participants, community referrals, life skill modules, housing options and direct services to provide for basic needs.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, or who has earned income at or below 200 percent of the federal poverty level. A needy family consists of minor children, custodial parents, legal guardians, or caretaker relatives of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 17, 2006 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann Silverberg Williamson
Secretary

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