

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Structural Pest Control Commission

Minimum Specifications for Termite Control Work (LAC 7:XXV.141)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953 (B)] for the purpose of amending LAC 7:XXV.141.J.8.d - e and adding Subparts g - h regarding mandatory requirements for pest control operators making applications with baits and baiting systems.

The Formosan Termite is a public nuisance, a pest and a menace to homes and buildings, live trees, agricultural crops, electronic and communication cables, wooden bridges, railroad ties, pilings and other structures. Bait and baiting systems, if properly used, may be effective new tools in controlling or suppressing the Formosan Termite. Failure to properly place or monitor bait and baiting systems subject property owners to additional and needless destruction of property by Formosan Termites. Such destruction can render homes and other buildings unfit for habitation or use; weaken bridges, pilings or other structures to the point of collapse or disrupt vital communication systems. Any such destruction endangers human life and poses an imminent peril to the public health safety and welfare of the citizens of Louisiana.

The Commissioner of Agriculture and Forestry has, therefore, determined that these emergency rules are necessary to require pest control operators to properly monitor for Formosan Termites and to properly place toxicant delivery systems in order to protect life and property.

These rules and regulations become effective upon the Commissioner's signature, and shall remain in effect 120 days or until these rules are permanently adopted through the normal promulgation process.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§141. Minimum Specifications for Termite Control

Work

A. - J.8.c. ...

d. monitoring shall be used to detect the presence of subterranean termites in the soil. All delivery systems shall be inspected at regular intervals, not less than once monthly and data shall be recorded;

e. baits and baiting systems may be used as a stand-alone termite treatment only with written approval by LDAF;

f. baits and baiting systems may be used as a supplement to traditional ground termiticide treatments;

g. monitoring stations shall be placed, where soil is available, a minimum of twenty (20) feet apart around the perimeter of the structure;

h. toxicant delivery following label and labeling shall be placed in or in close proximity to each monitoring stations that are infested with live termites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:000 (February 1999).

Bob Odom
Commissioner

9904#008

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)—Higher Education Scholarship and Grant Programs
(LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students, LAC 28:IV.

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective March 15, 1999, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

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

Chapter 3. Definitions

§301. Definitions

Merit Ranking Formula—a mathematical equation incorporating selected merit factors which is used to rank

eligible applicants in the priority by which competitive scholarships are to be awarded. As of July 1, 1997, the TOPS Teacher Award and Rockefeller State Wildlife Scholarship are the only programs in which applicants are competitively ranked. The following formulas for the merit ranking of scholarship applicants provide for the equating of scores for high school graduating seniors and college students.

a. Formula I—applies to applicants for the Rockefeller State Wildlife Scholarship with less than 24 hours of graded college credit and to applicants for the TOPS—Teacher Award with less than 48 hours of graded college credit:

$$\text{Merit Score} = \left(\left(\frac{\text{HSGPA}}{4.00} \right) \times 60 \right) \% \left(\left(\frac{\text{ACT}}{36} \right) \times 40 \right)$$

b. Formula II—applies to applicants for the Rockefeller State Wildlife Scholarship with 24 or more hours of graded college credit and to applicants for the TOPS—Teacher Award with 48 or more hours of graded college credit:

$$\text{Merit Score} = \left(\left(\frac{\text{College GPA}}{4.00} \right) \times 90 \right) \% \left(\left(\frac{\text{College Level}}{4} \right) \times 10 \right)$$

c. Formula III—applies to applicants for the TOPS Teacher Award. For those applicants majoring in math or chemistry, an additional 10 points are added to the merit score determined by Formula I or II, resulting in an adjusted merit score.

d. Applicants' merit scores are ranked in descending order with the applicant with the highest merit score ranked first. The number of applicants selected for award is dependent upon the amount of award funds available.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:

Jack L. Guinn
Executive Director

9904#001

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of Management and Finance Division of Research and Development

Medicare Rural Hospital Flexibility Program—Critical Access Hospitals (LAC 48:1.7601-7615)

The Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development proposes to adopt the following emergency rule in the Medicare Rural Hospital Flexibility Program (MRHF) as authorized by the Balanced Budget Act of 1997 (Public Law 105-33) and pursuant to Title XVIII of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:953B(1) et seq.

This emergency rule will implement the Medicare Rural Hospital Flexibility Program (MRHF) to assist rural communities in improving access to essential health care services through the establishment of limited service hospitals and rural health networks. The Program creates the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement and supports the development of rural networks consisting of CAHs, acute care hospitals and other health care providers.

This action is necessary to avoid imminent peril to the public served by small rural hospitals facing financial problems or closure and to secure new federal funding through the Health Resources Services Administration (HRSA) rural health grant. It is estimated the expenditure necessary to implement this rule will be \$1,200 certification cost for each facility certified. Medicare will fund 90 percent of this cost and the State 10 percent. The additional expenditure of state general funds for the state fiscal year 1999 is estimated to be \$1,560. This emergency rule provides for the establishment of the process for designating CAHs.

Emergency Rule

Effective April 20, 1999, the Department of Health and Hospitals, Division of Research and Development will implement the Medicare Rural Hospital Flexibility Program (MRHF) creating the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement. To qualify as a CAH, the small rural hospital must complete the following licensing and certification process.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 76. Medicare Rural Hospital Flexibility Program (MRHF)

Subchapter A. Critical Access Hospitals

§7601. Definitions

A. The following words and terms, when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise:

CAH—Critical Access Hospital.

EACH/ RPCH—Essential Access Community Hospital/Rural Primary Care Hospital—a limited service rural hospital program.

DR&D—Division of Research and Development.

EMS—Emergency Medical Services.

HCFA—Health Care Financing Administration.

HEALTH CARE NETWORK—an organization consisting of at least one CAH and one acute care hospital with agreements for patient referral, emergency/non-emergency transportation and other services as feasible.

HPSA—Health Professional Shortage Area designated by the federal Office of Shortage Designations.

HSS—Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section.

MSA—Metropolitan Statistical Area.

MRHF—Medicare Rural Hospital Flexibility Program.

MUA—Medically Underserved Area designated by the federal Office of Shortage Designations.

Necessary Provider—a facility located in a primary care HPSA or MUA; or located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state; or a facility located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level.

Not-for-Profit—incorporated as a non-profit corporate entity.

Primary Care—basic ambulatory health services that provide preventive, diagnostic and therapeutic care.

Primary Care Physicians—includes general, family and internal medicine, pediatrics and obstetrics/gynecology

PRO—Peer Review Organization.

Public Hospital—hospital supported by public funds including city, service district and state hospitals.

Rural—must be a full county (parish) located outside of a Metropolitan Statistical Area, as defined by the Office of Management and Budget.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7603. Criteria for Designation as a CAH

A. A hospital must submit an application to the DR&D and must meet the following criteria, or affirm that it can meet these criteria at the time of certification, to be designated as a CAH:

1. be a not-for-profit or public hospital;
2. be currently participating in the Medicare program and meet applicable conditions of participation;
3. be located in a rural area;
4. a. be located more than a thirty-five (35)-mile drive, or a fifteen (15)-mile drive in mountainous terrain or areas with secondary roads, from the nearest hospital or CAH; OR
b. be certified as a Necessary Provider by meeting at least one of the following:
 - i. be located in a primary care HPSA or a MUA;
 - ii. be located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state;
 - iii. be located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level.
- c. Provides not more than 15 acute care inpatient beds, meeting such standards as the Secretary may establish, for providing inpatient care for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7605. Services and Staffing

A. The facility makes available 24-hour emergency medical care services. This is to include the provision of immediate availability of on-line medical control.

B. The facility meets the staffing requirements that apply to rural hospitals (as found in section 1861(e) of the Social Security Act), except that:

1. the facility need not meet hospital standards regarding the number of hours per day or days per week in which it must be open and fully staffed, except as required to make emergency medical care services available and to have nursing staff present if an inpatient is in the facility;
2. the facility may provide the services of a dietitian, pharmacist, laboratory technician, medical technologist, and/or radiological technologist on a part-time, off site basis; and
3. inpatient care may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist, subject to the oversight of a physician who need not be present in the facility but immediately available in accordance with state requirements for scope of practice.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7607. Network Membership

A. The facility is a member of a rural health network and provides the following:

1. documentation of agreements with at least one hospital that is a member of the network for:
 - a. patient referral and transfer;
 - b. development and use of communications systems (including, where feasible, telemetry systems and systems for electronic sharing of patient data); and
 - c. provision of emergency and non-emergency transportation between the CAH and the hospital; and
2. documentation of an agreement for credentialing and quality assurance with at least one of the following:
 - a. a hospital that is a member of the network; or
 - b. a professional review organization (PRO) or equivalent entity.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7609. Application Submission and Review

A. A hospital that wishes to be designated as a CAH is required to submit an application to the DR&D. Application forms may be requested and submitted by interested hospitals at any time following HCFA approval of the State's Rural Health Care Plan and Application.

B. On receipt of an application, the DR&D will conduct a review to determine the eligibility of the applicant hospital for

conversion and consistency with the criteria for designation detailed in §7603.

C. The supporting information to be included with the application is:

1. documentation of public or not-for-profit status;
2. board resolution to seek CAH certification;
3. documentation of Medicare participation;
4. notification from State Office of Primary Care and Rural Health that location is in a HPSA or MUA;
5. affirmation that 24-hour Emergency Medical Care services and medical control agreements are available including information on staffing arrangements;
6. documentation that facility meets rural hospital staffing requirements with the following exceptions:
 - a. the facility need not meet hospital standards regarding the number of hours per day or days per week in which it must be open and fully staffed, except as required to make emergency medical care services available and to have nursing staff present if an inpatient is in the facility;
 - b. the facility may provide the services of a dietitian, pharmacist, laboratory technician, medical technologist, and/or radiological technologist on a part-time, off site basis; and
 - c. inpatient care may be provided by a Physician Assistant, Nurse Practitioner, or Clinical Nurse Specialist, subject to the oversight of a physician who need not be present in the facility but must be immediately available in accordance with state requirements for scope of practice.
7. copy of needs assessment, if available;
8. copy of strategic plan for conversion;
9. copy of financial feasibility assessment.

D. Decision. If an application is complete, and all supporting documentation provided, the DR&D will provide written notice to the applicant hospital.

1. If the application and required documentation supports conversion to a MRHF, after the effective date of the published rule, the DR&D will provide written notice of the designation to the applicant hospital and HSS.
2. If the application is incomplete or otherwise insufficient to allow designation, the DR&D will provide written notice to the applicant outlining the actions necessary to correct the deficiencies. The hospital may then address the deficiencies and resubmit its application.

E. Once designated, a hospital may apply to the Bureau of Health Services Financing, Health Standards Section (HSS) of the Department of Health and Hospitals for an on-site survey.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7611. Technical Assistance

A. The DR&D is available to furnish basic technical assistance to hospitals and communities interested in CAH

conversion, such as providing program information, helping with interpretation and completion of the application for designation, and identifying other sources of assistance and information.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7613. Program Monitoring and Evaluation

A. Ongoing monitoring and evaluation of the program will be conducted by the Quality Management Section of the DR&D.

1. Strengths and weaknesses of the program and state policy affecting CAHs will be assessed, with the goal of identifying problem areas and developing solutions.
2. Results will be reported to the DR&D Director who will assign program staff to work with other state agencies and interested parties to determine the necessity of changes and updates to the Plan and state policy.
3. All Plan changes will be forwarded to HCFA for review and approval.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7615. Process for Conversion Back to a Hospital

A. If a facility has been certified as a CAH and wishes to convert back to a hospital or to another type of provider, the facility must go through the certification process appropriate for that provider type.

1. Conversion to a hospital will not require compliance with the most recent life safety codes if the facility had been "grandfathered" under previous codes. Such facilities will be required, however, to meet the most recent applicable conditions of participation.

2. CAHs considering conversion back to a hospital should notify the DR&D and contact the Bureau of Health Services Financing, HSS for more information.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

Interested persons may submit written comments to Carolyn Maggio, Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, Post Office Box 2870, Baton Rouge, Louisiana 70821-2870.

David W. Hood
Secretary

9804#028

DECLARATION OF EMERGENCY

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

Hospital Neurological Rehabilitation
Program—Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will adopt the following emergency rule in the Medical Assistance Program as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing previously adopted a rule which established the prospective reimbursement methodology for an Intensive Neurological Rehabilitation Care Services Program in a hospital setting (*Louisiana Register* Volume 19, Number 7). The reimbursement methodology provided for annual rate adjustments based on financial audits of the facility's actual cost. The Department has determined that it is necessary to amend the reimbursement methodology contained in the July 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for hospital intensive neurological rehabilitation care services. The subsequent application of the inflationary adjustment to the reimbursement rates for these hospital services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

Public notice of this action was provided in the major Statewide newspaper publications and promulgated as an emergency rule (*Louisiana Register*, Volume 24, Number 12).

This subsequent emergency rule shall continue the provisions established by the December 1998 emergency rule.

Emergency Rule

Effective for May 1, 1999 and after, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for Hospital Intensive Neurological Rehabilitation Care Program contained in the July 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for intensive neurological rehabilitation care services. The subsequent application of the inflationary adjustment to the reimbursement rates for these hospital services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

David W. Hood
Secretary

9904#041

DECLARATION OF EMERGENCY

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

Inpatient Hospital Reimbursement—Medicare
Part A Claims

The Department of Health and Hospitals, Bureau of Health Services Financing is adopting the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act and as directed by Act 19 (General Appropriation Act) of the 1998 Regular Session of the Louisiana Legislature which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This emergency rule is adopted in accordance with the Administrative Procedure Act R.S. 49:950 et seq. and shall be in effect for the maximum allowed under the Administrative Procedure Act or until adoption of the rule whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides reimbursement for full co-insurance and deductibles for Medicare Part A claims for inpatient hospital services. Section 1902(a)(10) of the Social Security Act provide States flexibility in the payment of Medicare cost-sharing for dually eligible Medicare/Medicaid recipients who are not Qualified Medicare Beneficiaries (QMBs). Section 4714 of the Balanced Budget Act of 1997 clarifies that States have flexibility in complying with the requirements to pay Medicare cost-sharing for Qualified Medicare Beneficiaries and the protections against payment liability for QMBs. Section 4714 states that "a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for Medicare cost-sharing to the extent that payment under Title XVIII for the service would exceed the payment amount that otherwise would be made under the State plan under this title for service if provided to an eligible recipient other than a Medicare beneficiary."

When a State's payment for Medicare cost-sharing for an item or service rendered to a dually eligible Medicare/Medicaid recipient or a Qualified Medicare Beneficiary is reduced or eliminated to limit the amount under Title XVIII that the beneficiary may be billed or charged for the service, the amount of payment made under Title XVIII plus the amount of payment (if any) under the Medicaid State Plan shall be considered to be payment in full for the service.

The beneficiary does not have any legal liability to make payment for the service.

The Bureau has determined that it is necessary to limit the reimbursement of Medicare Part A claims for inpatient hospital services rendered to dually eligible Medicare/Medicaid recipients and QMBs to the Medicaid maximum payment. However, the reimbursement of Medicare Part A claims for inpatient hospital services in small rural hospitals as defined in state law shall not be limited to the Medicaid maximum payment. This change is necessary to avoid an anticipated budget deficit in state fiscal year 1998-1999. It is estimated that implementation of this rule will reduce expenditures in the Medicaid Program by approximately \$5,666,529 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of admission on or after April 1, 1999, the Department of Health and Hospitals, Bureau of Health Services Financing shall limit the reimbursement for Medicare Part A claims for inpatient hospital services rendered to dually eligible Medicare/Medicaid recipients and Qualified Medicare Beneficiaries to the Medicaid maximum payment. Small rural hospitals as defined in state law shall be exempt from this limitation on payment of Medicare Part A claims to the Medicaid maximum payment. If the Medicaid payment is reduced or eliminated as a result of applying the limit of the Medicaid maximum payment, the amount of the Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the service.

Interested persons may submit comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule. A copy of this emergency rule is available at parish Medicaid offices for review by interested parties.

David Hood
Secretary

9904#010

DECLARATION OF EMERGENCY

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

Inpatient Psychiatric Services
Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will adopt the following rule in the Medical Assistance Program as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule which established the prospective reimbursement methodology

for inpatient psychiatric services in a free-standing psychiatric hospital or a distinct part psychiatric unit in an acute care hospital (*Louisiana Register*, Volume 19, Number 6). The reimbursement methodology for inpatient psychiatric services provided for an annual adjustment to the reimbursement rate. Therefore, the Department has determined that it is necessary to amend the reimbursement methodology for inpatient psychiatric services contained in the June 20, 1993 rule by discontinuing the automatic application of the inflationary adjustment to the current reimbursement rates for inpatient services in a free-standing psychiatric hospital or distinct part psychiatric unit services. The subsequent application of the inflationary adjustment for inpatient psychiatric services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

Public notice of this action was provided in the major statewide newspaper publications and promulgated as an emergency rule (*Louisiana Register*, Volume 24, Number 12).

This subsequent emergency rule shall continue the provisions established by the December 1998 emergency rule.

Emergency Rule

Effective for May 1, 1999 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for inpatient psychiatric services contained in the June 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for inpatient psychiatric services.

The subsequent application of the inflationary adjustment for inpatient psychiatric services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

David W. Hood
Secretary

9904#042

DECLARATION OF EMERGENCY

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

Pharmacy Program—Average Wholesale Price

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 (General Appropriation Act) of the 1998 Regular Session of the Louisiana Legislature which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission

screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing published a rule effective April 20, 1990, regarding the reimbursement of drugs in the Louisiana Medicaid Pharmacy Program (*Louisiana Register*, Volume 16, No. 4). This rule established standards for payment for pharmacy services which included the definition of *Estimated Acquisition Costs* as the modified average wholesale price of the drug dispensed, identified by the manufacturer number, product number, and package number usually purchased by a provider, from a supplier whose products are generally available to all pharmacies and reported in one or more national compendia. Repackaged drug products supplied through co-ops, franchises, or other sources not readily available to other providers shall not be used to estimate provider acquisition cost. In such instances, the average wholesale price for the drug product used by the repackager identified by the manufacture number, product number, and largest reported package size in one or more national compendia shall be utilized by the agency to estimate acquisition cost. *Modified* as it is used in this rule is defined as the lower of:

1. Average Wholesale Price (AWP) minus 10.5 percent for single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost (MAC) or Federal Upper Limit and those prescriptions subject to MAC overrides based on the physician's certification that a brand name product is medically necessary;

2. Louisiana's Maximum Allowable Cost limitations; or
3. Federal Upper Limits.

The Department seeks to limit payments for prescription drugs by amending the Estimated Acquisition Cost formula from AWP minus 10.5 percent to AWP minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost or Federal Upper Limit and those prescriptions which are subject to MAC overrides based on the physician's certification that a brand name product is medically necessary for a particular recipient.

This action is necessary to avoid a budget deficit in the Pharmacy Program. It is estimated that this action will reduce expenditures in the Pharmacy Program by approximately \$4,895,921 for state fiscal 1998-1999.

Emergency Rule

Effective for dates of service on or after April 1, 1999, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will limit payments for prescription drugs to the lower of:

1. Average Wholesale Price (AWP) minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost (MAC) or Federal Upper Limit and those prescriptions subject to MAC overrides based on the physician's certification that

a brand name product is medically necessary plus the Maximum Allowable Overhead Cost (dispensing fee);

2. Louisiana's Maximum Allowable Cost limitation plus the Maximum Allowable Overhead Cost;

3. Federal Upper Limits plus the Maximum Allowable Overhead Cost; or

4. provider's usual and customary charges to the general public.

Interested persons may submit written comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule. A copy of this rule is available in the Medicaid parish offices for review by interested parties.

David W. Hood
Secretary

9904#011

DECLARATION OF EMERGENCY

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

Pharmacy Program—Average Wholesale Price (Repeal)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 (General Appropriation Act) of the 1998 Regular Session of the Louisiana Legislature which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to, pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted an emergency rule effective April 1, 1999 to amend the reimbursement methodology for prescription drugs in the Louisiana Medicaid Pharmacy Program. This rule limited payments for prescription drugs by amending the Estimated Acquisition Cost formula from Average Wholesale Price (AWP) minus 10.5 percent to AWP minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost or Federal Upper Limit and those prescriptions which are subject to MAC overrides based on

the physician's certification that a brand name product is medically necessary for a particular recipient.

As a result of a legislative oversight hearing, the Department has been directed to withdraw this emergency rule. Therefore, the following emergency rule is being adopted to repeal the April 1, 1999 emergency rule that amended the reimbursement for prescription drugs by limiting payment for the Estimated Acquisition Cost to AWP minus 15 percent.

Emergency Rule

Effective April 8, 1999, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the April 1, 1999 emergency rule amending the reimbursement for prescription drugs by limiting payment for the Estimated Acquisition Cost to average wholesale price (AWP) minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost or Federal Upper Limit and those prescriptions which are subject to MAC overrides based on the physician's certification that a brand name product is medically necessary for a particular recipient. This April 1, 1999 emergency rule was published in the March 31, 1999 editions of the state's major newspapers.

David W. Hood
Secretary

9904#049

DECLARATION OF EMERGENCY

Department of Social Services Office of Rehabilitation Services

Vocational Rehabilitation Policy Manual—Eligibility and Ineligibility/Services (LAC 67:VII.109 and 117)

The Department of Social Services, Louisiana Rehabilitation Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend the following rule in the Vocational Rehabilitation Services Policy Manual, Sections: Eligibility and Ineligibility and Vocational Rehabilitation Services policy.

The rule governing Eligibility and Ineligibility outlines the criteria for eligibility and ineligibility for vocational rehabilitation services.

The rule governing Vocational Rehabilitation Services outlines the vocational rehabilitation services that LRS is authorized to provide in accordance with the Rehabilitation Act.

This emergency rule must be effective March 24, 1999. LRS is invoking this Emergency Rule to maintain compliance with the Rehabilitation Act and to avoid deficit spending. A five year actual spending pattern indicates that vocational rehabilitation service costs have increased by more than 20% over the past five years. LRS' Vocational Rehabilitation Program operates as a "capped" eligibility program and is mandated by the Rehabilitation Act and federal regulations to first provide services to those individuals with the most

significant disabilities prior to providing services to other individuals, and to maintain policies covering the nature and scope of vocational rehabilitation services. Therefore, LRS must take this action to ensure that it meets the mandate of the Rehabilitation Act and to avoid deficit spending. The entire Vocational Rehabilitation Policy Manual is being promulgated with a Notice of Intent that will be published April 20, 1999. This Notice of Intent contains this emergency rule in its text. This emergency rule shall remain in effect for 120 days, or until the effective date of the final rule for the Vocational Rehabilitation Policy Manual, whichever occurs first.

The LRS policy manuals are referenced in LAC 67:VII as follows.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§109. Eligibility and Ineligibility

A. - F.4.a.i. ...

ii. The individual's significant physical or mental impairment seriously limits four (4) or more functional capacity areas;

F.4.a.iii. - b.i. ...

ii. The individual's severe physical or mental impairment seriously limits three (3) functional capacity areas.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 19:891 (September 1991), amended LR 20:317 (March 1994), LR 21:191 (February 1995), LR 22:993 (October 1996), LR 23:994 (August 1997), LR 25:

§117. Vocational Rehabilitation Services

A. - C.2.m. ...

D. Scope of Services in Community Rehabilitation Programs (CRP)

1. Cost Effectiveness

a. In consideration of the cost-effective provision of services in Community Rehabilitation Programs, LRS shall first use publicly-supported Community Rehabilitation Programs to provide assessment services, both for diagnostic purposes and in the provision of trial work periods, before using either private or private non-profit Community Rehabilitation Programs.

b. The only exceptions shall be as follows:

i. The service in a publicly supported CRP is not available.

ii. Provision of the service in a publicly supported CRP would create an extreme hardship for the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 25:

Madlyn B. Bagneris
Secretary

9904#009

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Trapping Season Extension

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency provisions to extend seasons and R.S. 56:259(A) which allows the Commission to extend

trapping in any area of the state each year and under the authority of a Declaration of Emergency adopted by the Commission on September 3, 1998, which gives the Secretary of the Department of Wildlife and Fisheries authority to extend or shorten the trapping season; the Secretary does hereby extend the 1998/1999 trapping season until official sunset March 31, 1999.

James H. Jenkins, Jr.
Secretary

9904#024