

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Board of Examiners of Certified Shorthand Reporters

Guidelines for Professional Practice (LAC 46:XXI.1301)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters, proposes to adopt the Professional Code of Ethics Rule.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 13. Code of Ethics

§1301. Guidelines for Professional Practice

A. The mandatory Code of Ethics defines the ethical relationship the public, the bench, and the bar have a right to expect from a Certificate Holder. It sets out the required conduct of the Louisiana Certified Court Reporter when dealing with the user of reporting services, and acquaints the user, as well as the Certificate Holder, with guidelines established for professional behavior. The Guidelines for Professional Practice are goals for which every Certificate Holder should strive. Certificate Holders are urged to comply with the Guidelines, which do not exhaust the moral and ethical considerations with which the Certificate Holder should conform, but provide the framework for the practice of reporting. Not every situation a Certificate Holder may encounter can be foreseen, but fundamental ethical principles are always present. By complying with the Code of Ethics and Guidelines for Professional Practice, Certificate Holders maintain their profession at the highest level.

B. A current certificate holder shall:

1. be fair and impartial toward each participant in all aspects of reported proceedings, treat all parties equally, and always offer comparable services and prices to all parties in a proceeding;
2. be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the Certificate Holder shall timely disclose said conflict or potential conflict to all parties in the proceeding or take the action(s) necessary for extraction from said conflict or potential conflict;
3. guard against not only the fact but the appearance of impropriety;
4. preserve the confidentiality and ensure the security of information, written, entrusted to the Certificate Holder by any of the parties in a proceeding;
5. be truthful and accurate when making public statements or when advertising the Certificate Holder's qualifications or the services provided;

6. refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations;

7. determine fees independently, except when established by statute or court order, entering into no unlawful agreements with others, whether for services or charges;

8. deliver requested transcripts of testimony timely to all parties on the same day. Delivery shall be by hand, if reasonable, or by proper posting if hand delivery is not reasonable;

9. refrain from giving, directly or indirectly, any gift, incentive, reward, or anything of value to attorneys, clients, witnesses, insurance company personnel or any other persons or entities associated with (the) litigation, or to the representatives or agents of any of the foregoing, except for:

a. items that do not exceed \$100.00 in the aggregate per recipient each year; or

b. pro bono services as defined by the National Court Reporters Association Guidelines for Professional Practice or by applicable state and/or local laws, rule, and regulations;

10. abide by the applicable nation/state/local laws and court rules and the rules promulgated by the Louisiana Board of Examiners of Certified Shorthand Reporters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and 37:2557(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 25:

Interested persons may submit written comments to Tonya Romaine, Louisiana Board of Examiners of Certified Shorthand Reporters, P. O. Box 3257, Baton Rouge, LA 70821.

Milton Donegan, Jr.

Chairman

Office Administration Committee

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Guidelines for Professional Practice

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this rule will not involve any cost to any State or Governmental Units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This rule will have no effect on Revenue Collections of State or Local Government.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no significant direct estimated costs or economic benefits to directly affected persons or non-governmental groups. The Rules will require the Court Reporters to be fair

and impartial toward each participant in all aspects of reported proceedings, treating all parties equally, and always offering comparable services and prices to all parties in a proceeding.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no direct significant effect on competition and employment. All Court Reporters will be subject to the proposed code of ethics.

Milton Donegan, Jr.
Chairman
Office Administration Committee
9904#064

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Economic Development
Office of the Secretary**

**Economic Development Award Program
(LAC 13:I.6017)**

In accordance with R.S. 51:2341, notice is hereby given that the Department of Economic Development, Office of the Secretary, proposes to amend rules and regulations in LAC 13:I.Chapter 60 for the Economic Development Award Program by adding §6017.

**Title 13
ECONOMIC DEVELOPMENT
Part I. Commerce and Industry
Subpart 3. Financial Incentives**

**Chapter 60. Economic Development Award Program
§6017. Public Safety Provision**

The Secretary may approve a request for funding for less than \$25,000 if the request involves the protection and enhancement of the safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:

Interested persons may comment on the proposed rules in writing until June 18, 1999 to Randy Rogers, National Marketing Director, Department of Economic Development, Post Office Box 94185, Baton Rouge, LA 70804-9185 or 101 France Street, Suite 202, Baton Rouge, LA 70802.

Kevin P. Reilly, Sr.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Economic Development Award Program**

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

Pursuant to Louisiana R.S. 51:2341, et seq., this program is administered by the Department of Economic Development (DED), Office of the Secretary. No changes in cost are anticipated. Existing Staff within the National Marketing

Division will be used to administer the program and to provide the economic impact analysis.

The Department of Economic Development has adopted a rule which allows for funding of infrastructure projects below \$25,000.00 when the protection and enhancement of the safety of the public is involved.

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

No effect on revenue collection is anticipated.

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

This change in the program rules is expected to allow funding for infrastructure projects which protects and enhances public safety for approximately three to six (3 - 6) local entities in its first year of funding. The number to be served in future years is anticipated to slowly increase depending on the number of applicants and an increase in funding.

LAC 13:I, Chapter 60, Section 6017 allows for funding of infrastructure projects below \$25,000.00 when the protection and enhancement of the safety of the public is involved.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This program's goal is to reduce unemployment and the risk of future unemployment by assisting businesses through incentives. This change in the Rules was made in an attempt to provide for funding below \$25,000.00 for projects that protect and enhance public safety.

Kevin P. Reilly, Sr.
Secretary
9904#056

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 741—Louisiana Handbook for School
Administrators/Adult Education Program
(LAC 28:I.901)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed amendment revises all policies related to the high school equivalency diploma being issued by the State Department of Education rather than a local high school. The amendment revises the wording to provide adult education as stipulated in the Workforce Investment Act of 1998.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§901. School Approval Standards and Regulations**

A. Bulletin 741

* * *

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 24:1085 (June 1998), LR 25:

**Bulletin 741—Louisiana Handbook
for School Administrators**

1.124.00 The Adult Education program shall be administered by the State Department of Education (SDE) and operated by eligible entities as stipulated in Title II of the Workforce Investment Act. The State Department of Education shall certify adult education sites of instruction using procedures as approved by the Board of Elementary and Secondary Education.

1.124.01 State or federally funded entities operating an adult education program or activity shall not exclude exceptional persons.

Requirements for Taking the General Educational Development (GED) Test

1.124.03A Any State-approved adult education site of instruction may recommend an individual to take the General Educational Development (GED) Test.

Issuance of Equivalency Diplomas

1.124.11 A high school equivalency diploma will be issued from the Louisiana State Department of Education after the student has successfully completed the test of General Educational Development (GED).

1.124.12 Repealed.

1.124.13 Repealed.

1.124.14 A Louisiana resident who successfully completes the General Educational Development (GED) Test at an official out-of-state GED testing center may be entitled to receive an equivalency diploma provided that an official copy of the GED Test results are submitted for review to the Division of Adult Education and Training in the Louisiana Department of Education, and provided the student meets all other qualifications to receive an equivalency diploma. Veterans do not need to submit qualifying scores.

1.124.18 Public high school equivalency diplomas shall be signed by the State Superintendent of Education and the President of the State Board of Elementary and Secondary Education.

Interested persons may submit written comments until 4:30 p.m., June 8, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for
School Administrators/Adult Education Program**

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

The estimated implementation costs will be:

1. Advertising and disseminating changes to Bulletin 741 \$300

2. Design cost for new GED Diploma to be paid by state office \$300

Total Cost = \$600

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs and/or economic benefits that will directly affect persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9904#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Test Security Policy/Erasure
Analysis Procedures (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to the Addendum in Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975). The revised Test Security Policy provides school districts with acceptable practices for administering and using state tests. The Erasure Analysis Policy outlines the procedures for conducting erasure analysis, and will be placed in the Addendum immediately following the Test Security Policy.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§901. School Approval Standards and Regulations**

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, II; R.S. 17:22 (2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975), amended LR 23:560 (May 1997), LR 23:709 (June 1997), LR 23:1644 (December 1997), LR 24:1495 (June 1998), LR 24:1085 (August 1998), LR 24:1896 (October 1998), LR 25:

Test Security Policy

The Board of Elementary and Secondary Education holds the test security policy to be of utmost importance and deems any violation of test security to be serious.

Test Security

1. Tests administered by or through the State Board of Elementary and Secondary Education shall include, but not be limited to:

- a. Graduation Exit Examination (GEE);
- b. all criterion-referenced tests (CRTs) and norm-referenced tests (NRTs).

2. For purposes of this policy, school districts shall include local education agencies; Special School District Number 1 schools; approved special schools such as the Louisiana School for the Visually Impaired and Louisiana School for the Deaf; laboratory schools, charter schools, Louisiana School for Math, Science and the Arts, and participating nonpublic/other schools which utilize tests administered through the State Board of Elementary and Secondary Education or the Louisiana Department of Education.

It shall be a violation of test security for any person to do any of the following:

- a. administer tests in a manner that is inconsistent with the administrative instructions provided by the Louisiana Department of Education (LDE) which would give examinees an unfair advantage or disadvantage;
- b. give examinees access to test questions prior to testing; NO ONE IS TO HAVE THE OPPORTUNITY TO EXAMINE ANY TEST ITEM AT ANY TIME EXCEPT THE STUDENT DURING THE TEST;
- c. copy, reproduce, or use in any manner inconsistent with test regulations all or part of any secure test booklet or answer document;
- d. coach examinees in any manner during testing or alter or interfere with examinees' responses in any manner;
- e. provide answers to students in any manner during the test, including provision of cues, clues, hints, and/or actual answers in any form—written, printed, verbal or nonverbal;
- f. administer published parallel or current forms of a test (e.g., Forms K, L, and M of The Iowa Tests) as a practice test; such parallel forms of a test must be kept in a predetermined, locked, secure area at the district office;
- g. fail to follow security regulations for distribution and return of secure test booklets and answer documents as well as overages as directed; or fail to account for and secure test materials before, during, or after testing; all secure materials must be kept in locked storage at both the district and school levels; secure materials MUST NEVER be left in open areas or unattended;
- h. conduct testing in environments that differ from the usual classroom environment without prior written permission from the Louisiana Department of Education, Division of Student Standards and Assessments;
- i. fail to report any testing irregularities to the District Test Coordinator (a "testing irregularity" is any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data);
- j. participate in, direct, aid, counsel, assist in, encourage, or fail to report any of the acts prohibited in this section.

3. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the state test security policy. A "Statement of Assurance" regarding the LEA test security policy must be submitted annually to the Louisiana Department of Education, Division of Student Standards and Assessments. This statement must include the name of the individual designated by the district superintendent or institution to procure test materials. The policy shall provide:

- a. for the security of the test materials during testing, including test booklets, answer documents, test administrators' manuals, observational answers, video tapes, and completed observation sheets;
- b. for the storage of all test materials except test administrators' manuals in a predetermined, secure, locked area before, during, and after testing;
- c. a description and record of professional development on test security and test administration provided for all individuals with access to test materials (access to test materials by school personnel means *handling* the materials but does not include reviewing tests or analyzing test items, which are prohibited);
- d. a list of personnel authorized to have access to the locked, secure storage area;
- e. a procedure for investigating any testing irregularities, especially erasure analysis.

4. Test materials, including all test booklets and answer documents containing secure test questions, shall be kept secure and accounted for in accordance with the procedure specified in the examination program administration manuals and other communications provided by the Louisiana Department of Education. Secure test materials include test administrators' manuals, test booklets, and answer documents.

The manual procedures shall include, but are not limited to, the following.

- a. All test booklets and answer documents shall be kept in a predetermined, secure, locked storage area prior to and after administration of any test; test administrators are to be given access to the tests only on the day the test is to be administered, and the tests are to be retrieved immediately after testing is completed for the day and stored in a locked, secure location each day of testing.
- b. All test booklets and answer documents shall be accounted for and written documentation kept by test administrators and proctors for each point at which test materials are distributed and returned.
- c. Any discrepancies noted in the number of serial numbers of test booklets and answer documents received from contractors shall be reported to the Director, Division of Student Standards and Assessments (LDE) by the designated institutional or school district personnel prior to the administration of the test.
- d. In the event the test booklets or answer documents are determined to be missing while in the possession of the institution or school district, the designated institutional or school district personnel shall immediately notify by telephone the Director, Division of Student Standards and Assessments (LDE). The designated institutional or school

district personnel shall investigate the cause of the discrepancy and provide the Louisiana Department of Education with a report of the investigation within thirty (30) calendar days of the initiation of the investigation. At a minimum, the report shall include the nature of the situation, the time and place of occurrence, and the names of the persons involved in or witnesses to the occurrence. Officials from the Louisiana Department of Education are authorized to conduct additional investigations.

5. Only trained personnel shall be allowed to have access to or administer any standardized tests.

6. Each district superintendent or institution shall annually designate one individual in the district or institution who is authorized to procure test materials that are utilized in testing programs administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education. The name of the individual designated shall be provided, in writing, to the Director, Division of Student Standards and Assessments (LDE), and included on the "Statement of Assurance."

7. Testing shall be conducted in class-sized groups. Bulletin 741 (2.038.01-02) states that K-3 classroom enrollment should be no more than 26 students, and in grades 4-12, no more than 33, "except in certain activity types of classes in which the teaching approach and the materials and equipment are appropriate for large groups." For grades K-8, the maximum class size for Health and Physical Education classes may be no more than 40. Class size for exceptional students is generally smaller (Bulletin 741, 2.038.05). Permission for testing in environments that differ from the usual classroom environment must be obtained in writing from the Louisiana Department of Education, Division of Student Standards and Assessments at least thirty (30) days prior to testing. If testing outside the usual classroom environment is approved by the Division of Student Standards and Assessments, the LEA must provide at least one proctor for every 30 students.

8. The State Superintendent of Education may disallow test results which may have been achieved in a manner which is violative of test security.

9. The Louisiana Department of Education shall establish procedures to identify:

- a. improbable achievement of test score gains in consecutive years;
- b. situations in which collaboration between or among individuals may occur during the testing process;
- c. a verification of the number of all tests distributed and the number of tests returned;
- d. excessive erasures for multiple-choice tests;
- e. any violation to written composition or open-ended responses that involves plagiarism;
- f. any other situation which may result in invalidation of test results.

10. In cases where test results are not accepted because of breach of test security or action by the Louisiana Department of Education, any programmatic, evaluative, or graduation criteria dependent upon the data shall be deemed not to have been met.

11. Individuals shall adhere to all procedures specified in all operational manuals that govern mandated testing programs.

12. Any individual(s) who knowingly engages in any activity during testing which results in invalidation of scores derived from the Graduation Exit Examination shall forfeit the test results and will be allowed to retake the test at the next test administration; beginning in 2000, any individual(s) who knowingly engages in any activity during testing which results in invalidation of scores derived from LEAP for the 21st Century shall forfeit the test results and will be allowed to retake the test at the next test administration;

13. Anyone known to be involved in the presentation of forged, counterfeit, or altered identification for the purposes of obtaining admission to a test administration site for any test administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education shall have breached test security. Any individual(s) who knowingly causes or allows the presentation of forged, counterfeit, or altered identification for the purpose of obtaining admission to any test administration site shall forfeit all test scores and will be allowed to retake the test at the next test administration.

14. Any teachers or other school personnel who breach test security or allow breaches in test security shall be disciplined in accordance with the provisions of R.S. 17:416 et seq., R.S. 17:441 et seq., policy and regulations adopted by the Board of Elementary and Secondary Education, and any and all laws that may be enacted by the Louisiana Legislature.

Louisiana Educational Assessment Program Erasure Analysis Procedures

In order to investigate erasures to student answer documents for the multiple-choice portions of the state criterion-referenced and norm-referenced testing programs, the following procedures have been developed.

1. The scoring contractor will scan every answer document for wrong-to-right erasures, and the state average and standard deviation will be computed for each subject at each grade level.

2. Classrooms of six or more students that exceed the state average by more than four standard deviations will be identified for further investigation.

3. The scoring contractor will produce *School/Class Erasure Analysis Reports* for those districts that have classrooms exceeding the four standard deviation criterion. This is a classroom-level report, aggregated to the district level.

4. For each classroom identified using the four standard deviation criterion, the LDE will receive from the scoring contractor:

School/Class Erasure Analysis Report (three copies, sorted by district) for districts having classrooms that exceed the four standard deviation criterion.

Student Erasure Analysis Report for students in the identified classrooms that exceed the four standard deviation criterion. This report contains student demographic information, an item-by-item analysis of wrong-to-right erasures, and a statement showing that the student exceeded

the four standard deviation criterion. The scoring contractor will maintain answer documents for the students exceeding the four standard deviation criterion (who are in classrooms that exceed the four standard deviation criterion), sorted by district/school/class. The answer documents will be available for review upon request.

5. Upon receipt of the *School/Class Erasure Analysis Reports*, LDE staff will notify the State Superintendent of Education regarding which schools have been identified.

6. The correspondence from the State Superintendent of Education to the local superintendent will state that a classroom (or classrooms) has been identified as having excessive erasures. Based on the number of erasures found, scores for students exceeding the four standard deviation criterion (who are in classrooms that exceed the four standard deviation criterion) will be voided. The individual student reports from the testing program will reflect the voided scores. In the aggregation of scores at the school, district, and state levels, the voided scores will have the effect of a "zero" score. Included with the correspondence will be the following documentation:

School/Class Erasure Analysis Report Student Erasure Analysis Reports

Copies of this correspondence will be provided to the Deputy Superintendent of Education, the Assistant Superintendent of the Office of Student and School Performance, the Director of the Division of Student Standards and Assessments, and the local District Test Coordinator.

7. When the correspondence is mailed (certified), the local superintendent will be advised to investigate the case of the irregularity and provide a written plan of action to the State Superintendent of Education within twenty working days.

8. A roster of classrooms will be generated where each identified classroom has an average of wrong-to-right erasures greater than three standard deviations above the state average, but less than or equal to four standard deviations above the state average of wrong-to-right erasures. These student scores will not be voided; however, local districts are expected to closely monitor security procedures at those schools.

9. A summary report of erasure analysis irregularities will be presented to the Louisiana Educational Assessment Testing Commission and the Board of Elementary and Secondary Education after each LEAP test administration.

Interested persons may submit written comments until 4:30 p.m., June 10, 1999, to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Test Security Policy/ Erasure Analysis Procedures**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated costs to the state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections at the state or local level.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There should be no effect on costs or benefits to directly affected persons in nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no impact on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9904#053

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1794—State Textbook Adoption Policy and
Procedure Manual
(LAC 28:XXXIII.101-2133)

Editor's Note:

Bulletin 1794 was promulgated as a rule in LR 2:110 (April 1976), and LR 13:496 (September 1987), amended LR 14:227 (April 1988), LR 16:956 (November 1990), LR 16:957 (November 1990), LR 18:255 (March 1992), LR 18:955 (September 1992), LR 21:201 (February 1995), LR 21:551 (June 1995), LR 21:1329 (December 1995), and LR 24:434 (March 1998) in uncodified format. When this bulletin becomes a rule as a codified document, historical notes will reflect activity from that time forward.

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1794, promulgated in LR 2:110 (April 1976), referenced in LAC 28:I.919.A. Bulletin 1794 contains procedures and guidelines for the adoption of state approved textbooks and reference materials.

Title 28 EDUCATION

Part XXXIII. Bulletin 1794—State Textbook Adoption Policy and Procedure Manual

Chapter 1. Purpose

§101. Introduction

A. The State Board of Elementary and Secondary Education (SBESE), in accordance with Chapter 1 of Title 17

of the Louisiana Revised Statutes of 1950, Part I, Sections 7 (4), 8(A)(1)(a) and Part IV, Section 351(A)(1), has responsibility to prescribe, adopt, control and supervise the distribution and use of free school books and other materials of instruction in elementary, secondary, special, post secondary and vocational-technical schools across the state of Louisiana. Funds are appropriated by the Louisiana Legislature in accordance with Article VIII, Section 13(A) of the Constitution for the purpose of providing school books and other materials of instruction free of charge to the children of this state at the elementary and secondary levels.

B. It is hoped that the policies and procedures contained in this bulletin will help local school districts to provide textbooks that will have a significant, positive impact on student achievement, student attitudes and behaviors, and on the interactions in the learning environment for students of all ages, abilities, backgrounds and areas of interest. Any interested citizen may request their name be placed on the mailing list for textbook adoption information (R.S. 17:415.1A) by writing to:

State Department of Education
Division of School Standards,
Accountability and Assistance
7th Floor, Room 740
Baton Rouge, Louisiana 70802

Attn: State Textbook Administrator

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 3. General Provisions

§301. Definitions

Ancillary—materials shall be defined as materials that are intended and designed to be used with a comprehensive basal program submitted by the same publisher, and may include materials such as workbooks, puzzles, assessment materials, black line masters, transparencies, etc. *Ancillary materials will be added to the publishers' contract after BESE approval of the basal textbook and teacher's edition.*

Basal—shall be defined as student-based curricular materials (print or non-print) which encompass the BESE-approved Louisiana Content Standards for specified subject areas. These curricular materials are considered a major teacher and student resource for attainment of the state standards and benchmarks and for the locally designed and aligned curriculum and course.

Core Subject Cycle—refers to the adoption period for English/Language Arts, Science, Social Studies, and Mathematics.

Teacher's Edition—shall be defined as materials used for informing teachers' instruction that are not designed or intended to be used by students. Teacher's editions may include teacher guides or instructor's manuals.

Textbook—shall be defined as any medium or material (print or non-print), book, or electronic medium that constitutes the *principal source for teaching and learning* in a specified subject area. A textbook shall be a systematically organized core of *stand alone* instructional materials (which may be hardbound, softbound, electronic or other media) designed to

support the teaching and learning of a curriculum based on the state-approved content or state curriculum guides [e.g., home economics, foreign language, health, business education], as approved by BESE.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§303. Textbook Approval

A. "The state shall prescribe and adopt free school books and other materials of instruction for use in elementary and secondary schools."

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:8(A)(B); R.S. 17: 351(A)(B).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§305. Textbooks and Materials of Instruction

A. State Screening of Textbooks and Materials of Instruction

1. "The state shall assure that all school books, films, related booklets, audio-visual devices, and any other similar materials of instruction are thoroughly screened, reviewed and approved as to their content by BESE and the local parish or city school board." Textbooks and teaching materials shall be available for public inspection at the Department's book depository and public libraries during regular office hours.

B. Adequate and Appropriate Instructional Materials

1. Instruction [at the local level] shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school system and state adopted content standards.

C. Formal Adoption and Implementation of Textbooks

1. Each school district shall make a formal adoption of textbooks within *3 months* from the date of state-level approval by the State Board of Elementary and Secondary Education (BESE). (Refer to Section II, LEA Responsibilities.)

2. School systems shall implement the latest textbook adoption for core subject areas of English/Language Arts, Science, Social Studies, and Mathematics within a three year period, in accordance with locally determined levels of access to be provided to students (i.e. classroom sets, personal copy). (Refer to Section II, LEA Responsibilities.)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4);8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§307. Louisiana State Adoption Cycle and Time Lines

A. Texts for specific subject areas shall be adopted every seven years. See appendix for adoption cycles.

B. Broad time lines governing the adoption process are listed on the following page. The Department of Education shall annually specify dates to be followed in each adoption year, per the Invitation Circular Letter to Submit Textbooks and Materials of Instruction for State Adoption which is issued annually to publishers.

C. Time Lines

Invitation to Submit Textbooks and Materials of Instruction Issued by SDE	Early March
Notice of Publishers' Intent to Participate Due to SDE	End March
SDE Supplies Submission Packet and Forms to Requesting Publishers	End March
State Committee Appointed (confidential letter)	April
SDE Informs Participating Publishers of State Committee Names/Publicly Names State Adoption Committee	April
Publishers' Mandatory Orientation	April
Submission Forms Due from Publishers to SDE; Manufacturing Standards on each Book Due to SDE	May
Detailed Specifications Filed by Publishers with SDE Regarding Hardware, Software, Special Equipment needed to review any item included in bid	May
Detailed Correlations to State Content Standards/Curriculum Guides Due to SDE from Publishers	May
State Committee Orientation	June/July
State Committee Files List with SDE of Equipment Needed to Review Textbooks	June/July
Publishers Supply Textbooks for Review to Designated Locations	June/July
State Committee Review of Textbooks	June/July-Mid-September
Public Review of Textbooks	June/July-Mid-September
Final Date for State Committee Members to Submit Written Questions for Publishers on Books Under Consideration	Mid-September
Final Date for Publishers to Submit copies to SDE of Answers to Written Questions from State Committee	October 1
SDE to Forward to State Committee Publishers' Written Answers	First Week October
SDE to Forward to State Committee All Written Public Comments	First Week October
State Committee Makes Final Recommendations for Adoption; State Committee files Affidavit Regarding Contact with or by Publishers	Mid-October
Publishers File Affidavit Regarding Contacts with State Board of Elementary and Secondary Education Members, Textbook and Media Advisory Council and Members of the Statewide Adoption Committee.	End October
Receive the Report on public comments by Textbook and Media Advisory Council	End October
Publishers Submit Final Versions of Texts to Replace Initial Galley Proofs	End October
BESE Approval of Textbooks Recommended for Current Adoption & Contact Affidvts.	End October

Publishers/Contracts Approved by BESE	November/December
Final Date for Publishers of Adopted Textbooks to Comply with SDE Directives on Production of Braille Materials	End March
Textbook Caravan	November-January
Local Adoption	November- End March
Initial Local Ordering	March-Mid-May

NOTE: Specific dates and timelines to be specified by SDE each year with Invitation Circular Letter.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4);8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§309. Funding for Textbooks

A. The Constitution provides that the Legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education (SBESE) to the children of this state at the elementary and secondary levels. The SBESE annually develops and adopts a formula to determine the cost of a minimum foundation program of education. Additional funds for textbooks may be awarded through state grants (e.g., 8g Quality Educators and K-3 Reading) and through federal grants.

B. State funds shall be used for the purchase of textbooks on the SBESE-adopted textbook list and academically related ancillary materials according to state guidelines (Bulletin 741, 3.026.13). Funds may also be used to purchase instructional materials for grades Kindergarten - Three and appropriate special education classes that are manipulative and concrete in nature in order to support the instructional program at these grade levels. Waivers for purchase of non-adopted textbooks/materials which exceed 10 percent of the state allocations may be granted to local school systems in special circumstances.

C. The State Board of Elementary and Secondary Education, at its meeting of June 22, 1989, exercised those powers conferred by the emergency provision of the Administrative Procedure Act, R.S. 49:953 B, and adopted the following guidelines to allow state textbook funds to be used to purchase instructional materials for Grade K-3 as recommended by the Department of Education.

1. For classes K-3, the school superintendents are authorized to use textbook funds to purchase textbooks and other materials that can be used to support the instruction in these four elementary grades (K-3).

2. The major emphasis in selecting instructional materials for K-3 should be on manipulative and concrete materials such as blocks, dramatic/housekeeping toys, manipulative (puzzles, legos, etc.), gross motor materials (jump ropes, balls, etc.) and other manipulative materials.

3. The characteristics and needs of the child in grades K-3 should be considered when selecting appropriate materials.

D. The State Board of Elementary and Secondary Education may authorize the Louisiana School of Math, Science and the Arts and other parish or city school boards with programs for gifted students to select and purchase textbooks not included on the lists adopted by the Board pursuant to the provisions of this Section, provided that such authorization shall be on an ad hoc basis and shall be subject to prior approval by the Board. Such purchases may be made using funds appropriated by the Legislature for the purchase of textbooks as provided for herein.

E. Public Schools

1. State and local funding for approved textbooks is generated through the Minimum Foundation Program (MFP) funding formula. The formula determines the minimum cost of total operational expenditures for each school system. Districts receive the state's share as part of a monthly allotment with provision for local flexibility that allows funds to be used as deemed appropriate by school systems. The amount of funding needed to supply an adequate number of new textbooks for any given adoption can be estimated using the following formula:

October 1 Student Membership (By Grade Level)	X	Textbook Unit Price (As adopted by LEA)	=	Estimated Textbook Costs (Costs Shared State and Locally)
--	---	--	---	--

2. It is required that districts take no more than three years to purchase newly adopted textbooks for core curriculum areas at all grade levels. The following example provides a method of estimating minimum expenditures for any given adoption cycle.

E.G., Math Adoption Cycle:			
Step 1			
OCTOBER 1 MEMBERSHIP	UNIT PRICE	ESTIMATED COSTS	
1,000 (Grades K-6) X	\$30.00 =	\$30,000	Full Implementation
+1,000 (Grades 7-12) X	\$40.00 =	\$40,000	Full Implementation
2,000 (Total)		= \$70,000	Full Implementation
Or;			
Step 2	\$70,000 / 3 = \$23,333	Estimated Minimum First Year Math Implementation <u>for a school district with student population of 2,000</u>	

F. Nonpublic Schools

1. Each nonpublic school receives a textbook allocation based on the number of K-12 nonpublic students enrolled in BESE and Brumfield-Dodd approved nonpublic schools. Reimbursement will be made to local school districts for purchases of nonsectarian books for nonpublic school students at the rate of \$27.02 per student. All books (textbooks, library books, encyclopedias and encyclopedic references) that go through a state adoption process are considered appropriate and may be purchased for nonpublic school students. *Orders for textbooks and materials of instruction must be delivered during each fiscal year (i.e., July 1 to June 30) in order to be eligible for reimbursement.*

October 1 Student Enrollment X \$27.02 = State Nonpublic Textbook Allocation (Academically and Brumfield approved schools)

2. If materials and supplies are included in purchase orders, it will be the responsibility of the local school district to conduct audits to ensure that the materials and supplies are used to provide students with nonsectarian instruction. Furthermore, all textbooks must be purchased and distributed through the local school district for each eligible nonpublic school in their area. It is requested that reimbursement requests be submitted in a timely manner. Payments will be made only from invoices. *In no event should these funds be distributed directly to nonpublic schools.*

3. Payments for textbooks and textbook administration will be made upon receipt of the completed Nonpublic School Textbook Invoice form provided through the Division of Educational Finance Services.

G. Special Funding For Textbooks

1. 8(g) Quality Education Support Fund

a. School districts and approved nonpublic schools may use 8(g) Quality Education Support Funds to supplement state MFP and local funding for textbooks and materials of instruction. The purpose of these funds is to ensure an adequate supply of superior textbooks, library books, and/or reference materials for these approved schools.

b. Effective with the 1996-97 granting cycle, Consent Judgement 90-880-A enjoins the State Board of Elementary and Secondary Education from making grant awards for library books and/or reference materials to non-public agencies that are determined to be pervasively sectarian entities.

c. Guidelines, issued each year by the State Board of Elementary and Secondary Education, should be consulted for specific requirements related to expenditures and for funding allocations.

H. Availability of Prestige License Plates and Applicable Revenues. R.S. 47:463.46, enacted during the 1997 Legislative Session, provides for a prestige license plate to provide special funding for the purchase of textbooks in approved elementary and secondary schools. The plate, bearing the words "Helping Schools," is available for purchase from the Department of Public Safety and Corrections at an annual fee of \$25.00, in addition to the regular fee. Revenues must be invested by the State Treasurer, on behalf of SBESE. Funds must be used solely for the purchase of textbooks.

I. Use of Federal Funds. School districts are encouraged to develop a consolidated plan, using all available funding streams, including federal funds, in order that adequate and appropriate textbooks and materials of instruction are available for students.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172:351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§311. Invitation Circular Letter

A. Specific dates are determined each year and are documented in the Invitation Circular notice issued to publishers.

B. The Invitation Circular Letter shall be sent to interested publishers from the Office of Student and School Performance (tentatively set for *March 1 of each year; refer to specific guidelines issued by the SDE each year*). The invitation will announce the subject and disciplines of materials being considered for adoption. Included in the invitation will be written guidelines and instructions covering the adoption process. The review of materials and adoption vote will be *limited to the student book (basal) and the teacher edition*. Publishers are also required to list on appropriate forms all ancillary and free materials which will accompany the basal texts. (Refer to §301 for definitions of textbooks, basal, teachers' edition, ancillary, and core subject cycle.)

C. The SDE shall provide specific forms to be used for textbook submissions. Publishers must list *each* book separately, along with copyright, price, printing edition, and grade/subject area to be considered for adoption, even if part of a series.

D. *No substitutions* shall be allowed to the list of textbooks once publishers submit the response to "Louisiana Textbook (LT)" forms. Publishers *WILL NOT* be allowed to discuss upcoming editions or pending revisions of texts *at any meetings* of the State Textbook Selection Committee.

E. *EACH* book must be evaluated on the basis of its current content. Final bound galley proofs may be submitted under certain circumstances, providing that the final hardbound copy is submitted, received and approved by the SDE prior to the final vote of the State Board of Elementary and Secondary Education. (Refer to specific timelines issued by the SDE for each adoption cycle.) Unbound manuscripts *will not* be accepted.

F. Publishers must guarantee that textbooks and materials of instruction which are submitted for consideration in the "LT Submission" form will be made available for duration of a seven-year contract period. *Do not submit materials that cannot be guaranteed for the duration of the contracted period*. No substitutions of texts or prices are allowed (unless the price is lowered, per Favored Nations clause) once the Submission Form is received by the SDE.

G. The Invitation Circular Letter shall also include an "*Intent to Participate*" form which shall be returned to the SDE by all publishers interested in responding to the Invitation.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§313. Establish State Textbook Adoption Committee

A. All textbook adoption committees appointed by the Superintendent of Education shall contain a membership of not less than one-third of which are teachers, not less than one-third of which are parents who are not public educators, and the remainder of which are other persons. For purposes of this section, the term *teacher* shall mean any person employed by a city or parish school board, who, as a condition of

employment, is required to hold a valid teaching certificate issued by the Department of Education (R.S. 17:415.1).

B. Nominations for membership may be made by the State Board of Elementary and Secondary Education, local school superintendents, and representatives of the BESE Nonpublic School Commission, as well as the State Superintendent of Education. The Committee shall contain a broad cross section in membership, to include parents, nonpublic educators, special educators, district-level curriculum supervisors, classroom teachers, and others who have interest and or knowledge of curriculum and subject matter under adoption.

C. Potential committee members shall be screened for potential conflict of interest with textbook publishers. Appointed members shall have no direct or indirect contact with publishers nor shall members have any business relationship, previous or planned, with any publisher. Committee members shall receive nothing of value from publishers or representatives in the state textbook adoption procedures, nor shall they accept any gratuity or offer of payment for services or attendance at publisher-sponsored functions. Potential members shall be asked to submit background information, including training and experience, willingness and availability to serve, and also an affidavit attesting that no conflict of interest with textbook publishers exists.

D. Committee members and publishers shall be informed in writing of appointment to the State Selection Committee by the State Superintendent according to the time line specified.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§315. Establish Criteria and Procedure for Evaluation and Selection of Textbooks and Materials of Instruction

A. The following SBESE-approved definition shall serve as a framework for the review of textbooks and materials of instruction which are offered for adoption.

1. A *State-Approved Textbook* is defined as a systematically organized core of instructional materials (which may be hardbound, softbound, electronic or other media) designed to support the teaching and learning of a curriculum based on the state-approved content standards *and state assessment* as approved by SBESE. This definition includes any medium or material (print or non-print), book, or electronic medium that constitutes the principal source of study for teaching in specified subject areas.

B. At a minimum, the following framework shall guide evaluation.

1. Textbooks and materials of instruction shall align with the standards and benchmarks of the State content standards, state-approved curriculum guides and state assessment program.

2. Textbooks and materials of instruction should promote an understanding of the history and values of the people of the United States and Louisiana, including the free enterprise system, private property, constitutional liberties, democratic values, and traditional standards of moral values. (R.S. 17:351).

3. Textbooks and materials of instruction should accurately reflect the contributions and achievements of people of differing races. (R.S. 17:351).

4. Other criteria as specified in the SDE-developed evaluation instrument (s).

Note: The SDE shall establish an appropriate evaluation instrument(s) which shall be used by State Textbook Adoption Committee members, and their local subcommittees, as tools for final decision making. In addition to the above frameworks, additional evaluation criteria shall focus on alignment of proposed textbooks and materials with the SBESE-approved state content standard/curriculum guides and assessment programs.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§317. Provide for a Publishers' Orientation

A. The SDE shall schedule an Orientation for all interested publishers. Publishers who are interested in submitting textbooks and materials of instruction for consideration are *required to have representation at the orientation or be eliminated.*

B. Publishers will receive information regarding expectations for content of state-adopted textbooks and materials of instruction. Procedures for submission, review and evaluation, and contracting will be discussed.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§319. Establish Procedures for Concerned Citizens' Involvement in the Review Process and a Procedure for Response by Textbook Publishers

A. A minimum of eight public sites shall be established for display and review of all basal textbooks presented for consideration. Sites shall include, at a minimum, New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, and Houma.

B. The SDE shall establish, in accordance with R.S. 17:415.1, a procedure which allows interested persons who are legal residents of Louisiana to inspect and review the books offered for adoption at the public review sites. Said procedure shall allow for written comments by citizens and written responses by publishers, and if requested, oral presentations by citizens and publishers.

C. *Interested citizens* who choose to make oral objections before the *State Textbook Adoption Committee* shall be allotted a maximum of 10 minutes. Oral objections by citizens shall be limited to those objections which have been previously filed in writing with the Department of Education following review at the public display sites. Upon request, citizens may also request to state oral objections before the *Textbook, Media and Library Advisory Council* of SBESE who will report findings to the Student Standards and Assessment Committee of SBESE. Comments shall be limited to 10 minutes and include only those previously filed in writing with the Department of Education.

D. *Publishers* shall provide a written response and shall have an option (maximum of 10 minutes) to present a response

before the State Textbook Selection Committee and the Textbook, Media and Library Advisory Council of SBESE.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§321. Role and Responsibilities of the State Textbook Adoption Committee

A. Committee members shall receive nothing of value from potential bidders for state textbook adoption at any time during the adoption process, nor shall they accept any gratuity or offer of payment for services or attendance at publisher-sponsored functions. Potential members shall be asked to submit background information, including training and experience, willingness and availability to serve, and also an affidavit attesting that no conflict of interest with textbook publishers exists.

1. Members shall be informed in writing that they shall have *no contact with publishers* once formal appointment to the State Adoption Committee is received. Publishers shall not attempt to influence the deliberations or vote of a Committee member, either directly or through third parties. *Violations of this requirement may result in immediate disqualification of the publisher and committee member.*

2. State Committee members shall be provided orientation and training by the Department of Education on purposes of the adoption, criteria for evaluation, use of the evaluation instrument (s), and procedures to be followed if local subcommittees are used to assist in the review process. Staff members of the Department of Education shall serve as consultants on curricular content and adoption procedures during all meetings of the Committee.

3. Committee members are *required to be in attendance and participate in all scheduled* activities of the Committee. Members must be in attendance at all scheduled meetings of the Committee in order to cast a vote for textbooks under consideration. The committee chair shall verify the attendance of the members.

4. State Committee members shall evaluate all titles submitted for adoption using the state-approved evaluation instrument(s). One evaluation form shall be completed by each State Committee member on each title reviewed. Evaluation forms are designed to assist the State Committee member in formulating a final decision and vote. Forms shall in no way be considered as binding upon the final vote of the committee member. In accordance with public records law, evaluation forms used for decision making will be collected by the SDE.

a. Part of the evaluation allows each State Committee member to formulate and prioritize *relevant questions* to be addressed by publishers on each book. Said questions shall be forwarded to the SDE by each Committee member by a date to be specified by the SDE.

b. The Committee may elect to move titles of textbooks from one subject area to another if it is felt that the book was placed inappropriately in a subject area by the publisher.

B. Each State Committee member may select, with assistance of the local textbook supervisor, a local five-member subcommittee. The department encourages that local subcommittees be made up of a broad cross section in membership, and may include parents, nonpublic educators, special educators, district-level curriculum supervisors, classroom teachers, and others who have interest and or knowledge of curriculum and subject matter under adoption to assist in the evaluation process.

1. Each subcommittee should evaluate textbook materials using procedures and instruments that parallel those specified by the Department of Education for the State Committee. The evaluation instrument(s) include an area for written questions to be addressed by publishers on specific textbooks which may then be submitted to the State Committee member for consideration.

2. Evaluation forms completed by local subcommittees are to assist the State Committee member. Only those forms used by the State Committee member for decision making will be collected by the SDE.

C. *The final vote on each textbook under consideration shall be through a voice roll-call vote which shall be duly recorded by the SDE. The State Committee member shall have discretion and final authority in the vote on each textbook under consideration for adoption.*

1. Each book must receive a *favorable majority* (defined as one vote over half of appointed committee members in attendance) of votes of the State Textbook Selection Committee in order to be placed on the state adopted list.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§325. Adopting Authority

A. The State Board of Elementary and Secondary Education (SBESE) is the official adopting authority in the state of Louisiana. SBESE will receive the report from the Textbook, Media, and Library Advisory Council regarding public comments on textbooks proposed for adoption.

B. Oral objections shall be limited to those which have been previously filed in writing with the Department of Education following review at the public display sites. Persons choosing to make oral objections shall be allotted a maximum of 10 minutes to address the full Board.

C. Publishers shall be allowed to provide a written response and or allotted a maximum of 10 minutes to present relevant information before the full Board.

D. The Textbook, Media, and Library Advisory Council shall be composed of members appointed by the State Board of Elementary and Secondary Education. The Council's function is to review relevant legislation, proposed SBESE policy, hear public comments regarding textbooks and materials of instruction proposed for state adoption and report findings to the Student Standards and Assessment Committee.

E. The Student Standards and Assessment Committee is made up of members of the State Board of Elementary and Secondary Education. The Committee may hear public comments which have been scheduled as a result of written comments received during the public review period. The

Committee will in turn make recommendations to the full Board of Elementary and Secondary Education.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 5. Local School System Responsibilities

§501. Local Planning

A. Local school systems shall develop a plan for providing adequate and appropriate instructional materials for students. Such plans shall include formal adoptions and appropriate procedures, as well as plans for implementation of policies included in Section II, C. *Districts must submit plans to SDE by June 30 of each year.*

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§503. Formal Adoption (see also, Bulletin 741, 1.070.03)

A. School systems shall make a formal adoption of textbooks according to the state adoption cycle within 3 months from the date of formal approval by the State Board of Elementary and Secondary Education (BESE).

NOTE: Will require a change in Bulletin 741.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§505. Local Implementation

A. Adequate and Appropriate Instructional Materials

1. Textbooks and materials of instruction for all curriculum areas at the local level shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school system (see also, Bulletin 741, 1.070.00).

a. School systems shall make a formal adoption of textbooks within 3 months from the date of state-level approval by the State Board of Elementary and Secondary Education (BESE). Local school systems shall provide students with access to current textbooks that conform to minimum standards of quality.

2. Textbooks for Core Curriculum Areas

a. School systems shall implement the latest textbook adoption for *core subject areas* of English/Language Arts, Science, Social Studies, and Mathematics within a three-year period, in accordance with locally determined levels of access to be provided to students (i.e. classroom sets, personal copy, other specified arrangement).

b. Currency. A school system shall implement the latest textbook adoption for core subject areas within a three-year period. Waivers of this policy shall be approved by BESE only upon extenuating circumstances as documented in the local Plan of Implementation to be submitted by June 30 of each year to the Department of Education.

c. Quality. A school system shall annually provide students with textbooks and materials of instruction that are useable and functional. Upon initial adoption textbooks and

materials must conform to the Minimum Manufacturing Standards and Specifications for Textbooks as developed by the National Association of State Textbook Administrators (NASTA) in consultation with the American Publishers and Book Manufacturers' Institute.

d. Access. A school system shall, based on input from local teachers, principals, administrators, and others, determine how access to textbooks in *core subject areas* will be made available to students. School systems must ensure that each child within the classroom will have equal access to any available instructional materials. School systems shall also *inform each parent/guardian in writing* at the beginning of each school year of the method of access to textbooks which has been selected for each course or grade level. A contact person and phone number should be provided.

i. Options for providing textbook access for students may include:

- (a). textbooks provided for each student;
- (b). textbooks provided via a classroom set;
- (c). textbooks provided as both a classroom set and take home copy for each student; or
- (d). other specified arrangement as deemed appropriate to the subject area by local officials.

3. Textbooks for Areas Other than Core Curriculum

a. Local school systems shall fully implement adoption in subject *areas other than core* as soon as funds will permit or as programmatic needs dictate. School systems must ensure that each child within the classroom will have equal access to any available instructional materials for non-core subject areas.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§507. Local Adoption Procedures

A. Purpose

1. To assure local public school systems have a defined procedure for textbook adoption.
2. To provide an opportunity for appropriate input in textbook selection.
3. To ensure curriculum content that reflects current national, state, and local standards of instruction.

B. Each local school system will hold a formal textbook adoption. The local textbook adoption process shall focus on those textbooks selected at the state level. *AFTER* state committee textbook recommendations are approved by the Board of Elementary and Secondary Education, within *thirty days* local school systems will be provided the list of state approved textbooks. Additional information regarding cost items included with the basal text, as well as all items to be given at no cost to local school systems, shall also be made available.

C. Local Adoption Procedures

1. An Established Time Line

a. Local school systems *must* hold textbook adoption each year following BESE approval of newly adopted texts. Districts are encouraged to hold local adoptions between *November and the end of March*. Participation in the State

Textbook Caravan is optional but may be used as a part of the local adoption procedures (see §507 D).

b. The SDE must be notified as to the locally adopted textbooks and the school system's Plan for Implementation by *June 30* in the school year of the adoption.

2. Properly Constituted and Trained Local Adoption Committee

a.i. All textbook adoption committees shall contain a membership of not less than one-third of which are teachers, not less than one-third of which are parents who are not public educators, and the remainder of which are other persons. For purposes of this section, the term *teacher* shall mean any person employed by a city or parish school board, who, as a condition of employment, is required to hold a valid teaching certification issued by the Department of Education (R.S. 17:415.1).

ii. Diverse membership is encouraged to include parents, nonpublic educators, special educators, district-level curriculum supervisors, classroom teachers, and others who have interest and or knowledge of curriculum and subject matter under adoption.

b. Local adoption committee members are to receive special training in textbook selection criteria (i.e., knowledge of subject area content standards and assessments), voting procedure and integrity of interaction with publishers.

D. Participation in State Textbook Caravan

1. School systems are encouraged to participate in the State Textbook Caravan as scheduled by the SDE. The State Textbook Caravan affords all school systems an equal opportunity to preview all state adopted textbooks and ancillary materials with onsite availability of publishers to answer questions.

2. All school systems, public, private and parochial, are eligible to participate in the State Textbook Caravan.

E. Provision for Publishers' Contact with Local School District; Optional Requests for Local Presentations

1. Local school systems are strongly encouraged to *establish a formal policy* regarding the method, time line, and procedure for publishers seeking to have contact with personnel at central offices and local school sites. Such policies may also address the provision of written materials to school and central office personnel as well as attendance of school and central office personnel at functions sponsored by publishers. Local school systems are further encouraged to *inform publishers* of local policy.

2. Local school systems may use the State Textbook Caravan as the single opportunity for publishers' presentations within the parish OR as a vehicle for identifying those publishers to be called for a local presentation.

3. *At the district's request*, one additional presentation by a publisher will be permitted at the local level for clarification of information on textbooks under consideration for adoption. However, such follow up presentation *may not occur* prior to conclusion of the State Textbook Caravan.

F. Sampling of Textbooks by Publishers; Violation will disqualify publisher.

1. Publishers are to furnish examination copies *only at the written request* of the local school system textbook adoption coordinator after state committee review.

2. Samples are to be *limited to* sufficient quantities for the designated local adoption committee members only, as determined by the local system textbook adoption coordinator.

3. Other persons choosing to examine samples *must* use samples provided by the SDE at predesignated sites for public review.

4. *No other examination copies* will be permitted.

5. Publishers must notify local school systems, in writing, of the need to have samples returned. If notified by publishers, all samples received by local school systems must be picked up by the publisher within *thirty days* after the local adoption.

6. Publishers must make all necessary arrangements for sample returns at publisher's expense.

G. Local Selection of Textbooks

1. An evaluation instrument must be used by local school districts. Alignment with state adopted content standards and state and local curriculum objectives, where applicable, *shall* be a primary consideration in the evaluation process. Local school districts may model state developed procedures and evaluation instruments.

2. An official summary report of local evaluation results is to be kept on file for a minimum of three years.

H. Notifying State of Local Textbook Selections

1. Local school districts shall notify the SDE of all textbooks selected by discipline and course via the local Plan of Implementation. Said notification must be made by *June 30* in the school year of the state adoption (Refer to Records and Reporting Requirements).

I. Notifying Schools of Locally Selected Textbooks

1. Each school shall be provided a list of all components of the locally adopted basal textbook in each subject area, including those items which may be purchased with textbook funds, and those items to be supplied by the publishers at no cost.

2. Local school systems may share with each school a list of the strengths and weakness of all textbooks selected.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§509. Ordering

A. All local systems must establish the amount of monies to be used for textbooks, library books, and school supplies from their MFP allocation. This breakdown shall be forwarded to the Office of Student and School Performance with its *Plan of Implementation* for the purchase of textbooks each year. The Plan of Implementation shall be submitted by *June 30* of each year.

B. Once the LEA determines the need of the schools based on the adoption schedule, orders may be placed with the SDE-designated textbook depository or directly with publishers.

C. When placing orders with the depository, the following schedule is suggested for ordering:

1. March 15 - May 15. Initial Ordering (*suggested time for ordering textbooks to be placed in schools for the first time in the coming school year).

2. May 15 - October 15. Second Ordering (*suggested time for revising initial order, ordering replacement or additional copies of texts already in use in the schools).

3. School systems may place orders in advance of the starting dates of each cycle.

D. All orders placed with the depository shall be delivered within 90 days of the end of each ordering cycle unless a later delivery date is requested by the LEA. Publishers and or the state textbook depository may be fined 1 percent of all outstanding balances on orders not delivered within ninety (90) days of the end of each ordering cycle, or within thirty (30) days for orders not placed during the ordering period, based upon complaints of local school districts and follow up review by the SDE. See §1901 of Appendix F.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§511. Direct Order of Textbooks

A. Effective January 1, 1998, HB 1057 of the 1997 Regular Session provides that any *governing authority* of a public elementary or secondary school may order and receive state adopted textbooks directly from a textbook publisher. Textbooks purchased directly from the publisher must be the same price or lower than can be purchased from any other source.

B. Publishers may be fined 1 percent of all outstanding balances on orders not delivered within ninety (90) days of the end of each ordering cycle, based upon complaints of local school districts and follow up review by the SDE. (See §519 and §1901 of Appendix F.)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§513. Waivers

A. Purchasing Books not on the Approved State List

1. A local school system or school may use *up to but not to exceed 10 percent of its textbook allotment* for the purchase of non-state adopted textbooks and materials of instruction. Approval by the State Board of Elementary and Secondary Education is not required.

B. Special Waiver to Exceed 10 percent of Textbook Allotment on Non-adopted State Textbooks and Materials of Instruction

1. A local school system, with the approval of its local school board or chartering authority, and may petition in writing the State Department of Education for permission to spend *in excess of the 10 percent* allowance for non-adopted state textbooks. The Office of Student and School Performance will present the petition to BESE for action and notify systems of the results.

2. Requests shall be accepted from *March through May 31*. Textbook orders may not be processed until waivers have been approved. The last month for BESE action on such waivers shall be June. Any extenuating circumstances shall be handled on an individual basis.

C. Purchase of Instructional Materials for Grades K-3

1. The State Board of Elementary and Secondary Education, at its meeting of June 22, 1989, exercised those powers conferred by the emergency provision of the Administrative Procedure Act, R.S. 49:953 B, and adopted the following guidelines to allow state textbook funds to be used to purchase instructional materials for Grade K-3 as recommended by the Department of Education.

a. For classes K-3, the school superintendents are authorized to use textbook funds to purchase textbooks and other materials that can be used to support the instruction in these four elementary grades (K-3).

b. The major emphasis in selecting instructional materials for K-3 should be on manipulative and concrete materials such as blocks, dramatic/housekeeping toys, manipulative (puzzles, legos, etc.), gross motor materials (jump ropes, balls, etc.) and other manipulative materials.

c. The characteristics and needs of the child in grades K-3 should be considered when selecting appropriate materials.

D. Special Purchase for Gifted Programs

1. The State Board of Elementary and Secondary Education may authorize the Louisiana School of Math, Science and the Arts and other parish or city school boards with programs for *gifted students* to select and purchase textbooks *not included on the lists adopted* by the Board pursuant to the provisions of this Section, provided that such authorization shall be on an ad hoc basis and shall be subject to *prior approval by the Board*. Such purchases may be made using funds appropriated by the Legislature for the purchase of textbooks as provided for herein.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§515. Records and Reporting Requirements (see also, Bulletin 741, 1.026.12-13; 3.026.12)

A. School systems shall maintain an inventory system for use in submitting records and reports, as required by the Department of Education, and include all textbooks on hand at the beginning of the session, as well as records of those added, worn out and in need of replacement.

1. Local Plan of Implementation

a. Local school systems shall submit an annual *Plan of Implementation* for textbook adoption to the SDE by June 30 of each year. Such plans shall document local implementation of adequate and appropriate instructional materials. Specific forms for this purpose will be provided by the SDE. In addition, an ongoing textbook inventory system should be used to maintain records for a minimum of three years.

b. The SDE must be notified of all textbook titles selected by discipline/course. This plan must address the number of books to be ordered by subject, course, and grade level. The school system shall *indicate which of the following options* will be applicable to the latest subject adoption:

- i. textbooks will be provided for each student;
- ii. textbooks will be provided via a classroom set;

iii. textbooks will be provided as both a classroom set and take home copy for each student;

iv. other specified arrangement as deemed appropriate to the subject area by local officials.

2. Textbooks Used By Blind and Visually Impaired Students

a. School systems in need of books and materials for use by blind and visually impaired students should begin by contacting the school district's special education supervisor to ensure the student has an approved Individualized Educational Plan (IEP) that states the need for braille or large print materials. The Local Textbook Implementation Plan submitted to the State Textbook Administrator each year should include a statement of need and a plan for securing textbooks for students who are blind or visually impaired. This plan should include the following:

i. procedures for requesting/ordering from Louisiana Learning Resource System (LLRS);

ii. procedures for securing textbooks not available from LLRS;

iii. number of students included on the census of students with visual impairments compiled by LLRS school code;

iv. number of students reported visually impaired and or blind to the Student Information System (SIS) at each school code.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§517. Textbooks for Home Study Program

A. The following procedures shall be used for ordering of textbooks to be used in approved home study programs. Parents and or guardians *must* proceed through the following steps in order to access textbooks for students in home study:

1. submit application to SDE and obtain approval for participation in the Home Study Program;

2. present copy of approved Home Study Application form to the local Textbook Supervisor or designee at local school board office;

3. select the textbooks and/or materials needed from the listing provided by the textbook personnel at each local school board office (only materials approved by SBESE and adopted by local school districts are provided, *when available*);

4. provide a deposit equal to fifty percent (50 percent) of the replacement cost. Such deposit will be returned when the books are returned. If books are not returned or paid for, the parent or legal guardian shall not be eligible to continue participation in the textbooks rental program until all textbooks debts are cleared.

NOTE: Only one grade level set of texts per child per subject is available at any single time.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13 (A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236-236.1; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§519. Report on Status of Local Ordering—Late Delivery by Publishers

A. LEAs shall inform the SDE of any publisher who fails to provide textbooks within ninety(90) days of the end of each ordering cycle, or within thirty (30) days for orders not placed during the ordering period. Such notice shall be on forms prescribed by the SDE. (See §1901 of Appendix F).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§521. Sale of Textbooks No Longer in Use

A. LEAs shall request permission of the SDE to dispose, sell, or donate out-of-date or unusable or unsalable textbooks. *Limitation: Textbooks no longer in use may not be sold to anyone whose intent is to resell them.*

B. In order to obtain the greatest utility from out-of-use textbooks and to assist local school districts and schools, the following options are available to local school districts.

1. If a textbook or library book has been *out of use for over a year* a parish or city school board may, with the *approval of the [State] board*, donate said book to any public hospital, any jail or prison, or any public institution, or to any individual for private use free of charge.

a. Any textbook or library book which a parish or city school board is unable to sell or donate after being out of use *in excess of eighteen months*, or any textbook or library book which is deemed by said board to be unusable or unsalable, shall be *disposed* of in an appropriate manner.

b. A parish or city school board, with the prior approval of the State Board of Elementary and Secondary Education, may by the debinding and shredding method, dispose of any textbook or library book that has not been sold or donated and has been out of use parish wide in excess of eighteen months. If the debinding and shredding method is chosen the following procedures are to be followed:

i. submit request(s) to the SDE between March - June 30 of each year;

ii. upon submission of request, local school districts shall notify all SBESE and Brumfield-Dodd approved non-public schools within their district of the availability of these textbooks by disciplines, giving them *three weeks* to express their interest in securing any of these textbooks;

iii. the local school district may select a vendor and enter into a contract for the debinding and shredding of those books no longer in use;

iv. the local school district shall maintain appropriate records for *three years*;

v. the local school district shall derive all funds from the debinding. Funds derived from such sale shall be used by the parish or city school board *solely* for textbook or library book purchases.

c. *The reproduction of any textbook or library book no longer in use by a parish or city school system and the use of multiple copies of such books by organized groups or by an educational agency or entity is prohibited, per R.S. 17:8.1.*

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§523. Reasonable and Proper Care for and Control over Textbooks and Other Materials of Instruction

NOTE: This policy shall also be applicable to instructional materials, supplies, and equipment (see also Bulletin 741)

A. HB 2175, of the 1997 Regular Session, authorizes local school systems to establish methods by which responsibility for reasonable and proper care for and control over textbooks and other materials of instruction is ensured. The SDE recommends that Student Handbooks, issued to students at the beginning of each school year, include a policy statement that stipulates responsibility for proper use and control over textbooks and other materials of instruction that are on loan to the student during the school year. Signature lines should be included for both student and parent/legal guardian acknowledgment of responsibility. In addition, a contact name and phone number should be provided. Payment plans for restitution by parents/guardians may be specified.

B. Each school system, as part of their responsibility to ensure proper care and control of textbooks, shall adopt procedures which hold students and parents/guardians responsible for exercising reasonable and proper care of textbooks and materials of instruction.

C. Such procedures may provide that parents and/or legal guardians may be required to compensate the school district for lost, destroyed, or unnecessarily damaged books and materials, and for any books which are not returned to the proper schools at the end of each school year or upon withdrawal of their dependent child. Under no circumstances may a student of school age be held financially responsible for fees associated with textbook replacement.

D. Compensation by parents or guardians may be in the form of monetary fees or community/school service activities, as determined by the school governing authority. In the case of monetary fees, fines shall be limited to no more than the replacement cost of the textbook or material, but may, at the discretion of the governing authority, be adjusted according to the physical condition of the lost or destroyed textbook. A school system may waive or reduce the payment required if the student is from a family of low income and may provide for a method of payment other than lump-sum payment.

E. In lieu of monetary payments, both school systems and parents/guardians may elect to have students perform school/community service activities, provided that such are arranged so as not to conflict with school instructional time, are properly supervised by school staff, and are suitable to the age of the child.

F. School systems may withhold the grades of a student if a parent or guardian fails to adequately compensate the school or school system for lost, destroyed, or unnecessarily damaged books (through monetary fees or community/school service activities).

G. However, under NO circumstances may a school or school district refuse the parent/guardian the right to inspect relevant grades or records pertaining to the child NOR may the school or school district refuse to promptly transfer the records of any child withdrawing or transferring from the school, per requirements of the Federal Family Educational

Rights and Privacy Act. Transfer of records shall not exceed 45 days from the date of request.

H. Under NO circumstances may a school or school district deny a student promotional opportunities, as a result of failure to compensate the school district for lost or damaged textbooks. Students shall not be denied continual enrollment each grading period nor re-entry in succeeding school years as a result of lost or damaged books.

I. Students shall not be denied the use of a textbook during school hours each day. Each school system shall annually inform parents and/or legal guardians of the locally adopted procedures pursuant to state law and regulation, regarding reasonable and proper control of textbooks (See also Bulletin 741, *School Administrators Handbook* for policy regarding this legislation).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§525. Ongoing Inventory System

A. School are required to develop and maintain an ongoing textbook inventory system. Records should be kept on file a minimum of three years. Data elements should include those requested for the district's Plan of Implementation.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 7. Publishers' Responsibilities

§701. Requirements for Publishers' Participation in State Textbook Adoption

A. Publishers are *required to follow the procedures* below in order to be eligible to participate in any state textbook adoption process. Publishers *must* provide the required information to the Department of Education by the specified time each year in order for a bid to be accepted for consideration.

B. An *Intent to Participate* form shall be mailed during each adoption year to publishers whose names and addresses are on file in the Department of Education.

C. Publishers are *required to file an Intent to Participate form* with the SDE by the assigned date in March each year *in order to receive a full textbook submission packet*.

D. Publishers are required to provide proof of registration with the Louisiana Secretary of State's Office in order for contracts to be legally negotiated. It is the *responsibility of the publisher* to ensure that proper forms are completed and that the company is registered according to state laws and regulations.

E. *Publishers are encouraged to submit such documentation along with the return of the Intent to Participate form*. However, publishers may submit the verification at a later date, but *no later than October 1* of each year. Under *no* circumstances will a contract be negotiated with a publisher without such documentation.

F. Publishers are required to provide the name, address, telephone, fax number, and electronic mail address, if applicable, of one local representative and one corporate

representative of the company. The designated representatives should be those officials who are authorized to speak on behalf of the company within the State of Louisiana, and at the corporate level, are authorized to enter into contract agreements with the Department of Education/BESE. Such information shall be *submitted with the Notice of Intent to Participate form* to be submitted each year by interested publishers.

G. Publishers are required to *provide written notification* to the Office of Student and School Performance of changes in agents or representatives, addresses or phone numbers. *No more than two (2) names and addresses may be designated to receive information at any one time for any one person, firm, corporation or organization*.

H. Publishers who are interested in submitting textbooks and materials of instruction for consideration are *required to have representation at the Orientation*, to be scheduled annually by the SDE. Failure to have representation will result in disqualification of the publisher.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§703. Publishers' Formal State Textbook and Materials of Instruction Submission

A. Publishers shall submit a formal response on state developed forms.

1. State Submission Forms for Textbooks and Materials of Instruction

a. Publishers must submit the *Intent to Participate Form* by the prescribed deadline each year in order to receive the Invitation Circular Letter and accompanying state textbook submission packet.

b. All state forms must be fully and accurately completed. Publishers' submission forms must clearly state each book or series of books the publishing company intends to offer in the appropriate subject area and grade level.

c. All submissions must be received in the Office of Student and School Performance, Department of Education building, by *4:30 p.m. on the date specified each year*. There will be *no* exceptions.

d. Failure to complete all required information on the submission form may result in disqualification of the publisher.

e. Publishers are required to submit detailed *manufacturing standards* on each book listed on the state submission forms. Manufacturing standards must be submitted *along with the submission forms*.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§705. Notification of Required Hardware, Software, Special Equipment Needed by State Textbook Adoption Committee Members to Review Textbooks and Materials Submitted by Publishers

A. Publishers are required to submit in writing to the SDE by the designated time each year, a detailed list of *hardware*,

software, and any special equipment which may be needed by State Textbook Adoption Committee members for review of textbooks and materials of instruction.

B. Publishers *will be* responsible for costs associated with rental of needed equipment by State Committee members, if other means are not available to the member. Publishers will be billed by the SDE for rental of such equipment.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§707. Submission of Correlations to State-Approved Content Standards/Curriculum Guides

A. Publishers are required to submit in writing detailed *correlations to State Content Standards/Curriculum Guides*, for subject/content areas under adoption by the specified time each year.

B. Specific requirements shall be issued by the SDE regarding the format and methods to be used in preparing and reporting of correlations.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§709. Textbook Samples for Review by State Textbook Adoption Committee Members and State Citizens

A. Publishers are *required to place a fixed label on the outside of each book* to be mailed to Committee members or to Public Review sites. Each label shall clearly identify the following, in this order:

1. traditional; non traditional; thematic;
2. subject area which corresponds to the state bid form;
3. applicable grade level;
4. title;
5. teacher or student edition;
6. publisher; and
7. copyright date.

B. A *checklist of titles* should be enclosed with each box.

1. The checklist *should include the following, in this order*:

- a. book title;
- b. corresponding state bid subject area;
- c. applicable grade level;
- d. teacher or student edition;
- e. publisher; and
- f. copyright date.

2. In addition, a list of *all textbooks* submitted for state adoption is required in order to determine whether total shipments from the publisher have arrived.

C. Publishers *shall NOT* provide *any item of value*, no matter how insignificant, to State Committee members (i.e.. NO mugs, book bags, pens, or other token of appreciation) when samples are distributed. *NO brochures or marketing information shall be included with shipments*.

D. Publishers shall send appropriately labeled samples of all basal and teachers' editions listed on submission forms to *location(s) designated by the Department of Education*.

E. Publishers should obtain a returned signed receipt as verification that *all* titles submitted for state review have been received at designated location(s). Publishers shall be responsible for ensuring that books are received at designated location(s) for subsequent review by State Textbook Adoption Committee members. A summary check list that corresponds with materials submitted for review is required in addition to individual packing lists.

F. If samples are *not received* by the SDE-specified deadline, or are not of sufficient quantity for distribution, the book *shall be disqualified* from the adoption process.

G. The publisher will have the responsibility of making arrangements to have materials picked up from the Committee members at the conclusion of the voting process. If the publisher fails to make the necessary arrangements within 30 days after the adoption, the materials will become the property of the Committee members.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§711. Submission of Galley Proofs

A. Galley proofs may be submitted to designated location(s) as samples for review by State Committee members *provided that the finished books will be available by the date specified by the SDE each year*.

B. A *galley proof* shall be defined as the *final bound* manuscript set in type with all corrections made and the elements of the pages arranged in their final form [i.e., only book binding required for completion].

C. In the case of galley submissions, publishers *must* also submit detailed manufacturing standards which will be used when the final book is published.

D. Publishers shall pick up galleys from the designated public review sites and replace them with finished books prior to the State Caravan.

E. Any new or updated editions of the originally adopted book must be provided to the state of Louisiana at the same price and terms as stipulated in the bid form and state contract. *Updated editions or additions to complete a series previously adopted must be submitted to the SDE for review and recommendation to BESE by the specified time each year*.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§713. Samples for Public Review

A. *Publishers* are required to supply an adequate quantity of textbooks/materials of instruction for placement at the public review sites.

B. The SDE shall arrange sites for public display of proposed textbooks and shall provide a written form for public comment. *Copies of basal textbooks being considered for adoption shall be placed in cooperating public libraries in those cities named in La. R.S. 17:415.1: New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lake Charles, Lafayette and Houma, with the addition of Natchitoches*. Public libraries must be contacted initially for use of their

facilities for public display, and if they are unable to accommodate the display, the State Department of Education may select an alternate site.

C. Publishers shall pick up galleys from the designated regional library/ public review sites and replace them with finished books prior to the State Caravan.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§715. Role of the Publisher During State Committee Review

A. The SDE shall inform all publishers submitting an Intent to Participate form of the names of appointed State Committee members. Publishers shall have *no personal contact* with the State Committee members once names of Committee members are released by the SDE *and until such time as the state adoption process has been completed.*

B. *Personal contact shall be defined as any one-on-one, written, or third parties contact, other than the presentation of materials or provision of SDE requested materials at state-requested or conducted textbook adoption proceedings.*

C. Publishers shall not attempt to influence the deliberations or vote of a Committee member, either directly or through third parties. *Violations of this requirement will result in immediate disqualification of the publisher.*

D. Publishers shall provide nothing of value to any committee member at any time during, or after the adoption process.

E. Publishers shall be required to file written affidavits regarding any contact with State Textbook Adoption Committee members AND with State Board of Elementary and Secondary Education members.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§717. Written Questions and Responses to Questions Regarding Textbooks Under Consideration

A. Each State Textbook Adoption Committee member may formulate and prioritize relevant questions to be addressed by publishers on each book under consideration for adoption. Questions shall be forwarded to the SDE by each Committee member on forms prescribed for such purpose by a date to be determined by the SDE.

B. *Questions may address the physical characteristics and layout, factual content of the book, relationship to state content standards and assessment, organization, presentation and sequencing of content, and any other area specified for evaluation on the state evaluation form. Questions may not address items contained on the Ancillary Materials Bid Form, Free Materials Bid Form, including in-service offerings. Questions will be forwarded to publishers.*

C. *Written responses shall be developed by publishers according to SDE instruction. Failure to respond according to the specified time line will disqualify the book for consideration of adoption.*

D. *Responses by publishers may not address items contained on the Ancillary Materials Bid Form, Free Materials Bid Form, including in-service offerings.*

E. Sufficient copies of the *written responses* shall be forwarded to the SDE by respective publishers according to the specified time each year. The SDE shall be responsible for forwarding copies of the written responses to State Committee members.

F. All meetings of the textbook adoption committees *shall be open to the public.* The SDE shall post official public notice of all meetings of the State Textbook Adoption Committee.

G. Each publisher shall be invited to a question/answer session during which time State Committee members may seek further clarification to written responses provided by publishers or pose additional questions for publishers' response. Publishers shall be allowed to discuss how their basal and teacher's editions align with the state content standards and assessment program. *Publishers may not address ancillary or free materials proposed for addition after SBESE approval of basal.*

H. Publishers shall be allocated a maximum time period for the question/answer session, as specified by the SDE.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§719. Publisher Conduct During the State Caravan

A. Publishers *shall NOT* provide any item of value, no matter how insignificant to State committee members (i.e., NO mugs, book bags, pens, or other tokens of appreciation) when samples are distributed. *NO brochures or marketing information shall be included with shipments.*

B. Publishers shall NOT solicit names or make requests related to samples.

C. No sample books are to be removed from the Caravan.

D. Publisher fees will be collected to cover costs of refreshments at each location.

E. Folders of product information may be offered.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§721. Obligations to Provide Textbooks and Materials of Instruction within Prescribed Time Periods

A. Publishers must ensure that textbooks are delivered to local school systems within 90 days of the end of the appropriate ordering cycle as specified. The SDE may authorize fines on textbook publishers who fail to deliver ordered materials within the 90 day time line. Said fine shall equal 1 percent of the outstanding balance for any order that has not been received by the local school system within 90 days after the closing date of the appropriate ordering cycle.

1. State Contract for Adopted Textbooks and Materials of Instruction

a. The State Board of Elementary and Secondary Education, at its meeting of June 28, 1990, exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953B, and approved the following amendments to textbook adoption procedures, *effective June 28, 1990*:

In the 1990-91 adoption and all other adoptions thereafter, all titles approved through the state textbook adoption process will carry a definite contract not to exceed seven years.

b. The state textbook adoption shall be limited to Basal Textbooks and Teacher's Edition only. Ancillary materials will carry a fixed cost for the life of the contract. Free materials, included in the formal submission by publishers, must clearly indicate period of availability, if other than the seven-year contractual period.

c. Publishers with materials under contract with the State of Louisiana may add materials during the specified time each year. The *addition* can be only textbooks that complete an adopted series, ancillary materials that accompany an adopted basal program, or a new copyright edition of an adopted textbook. If a new copyright edition is requested for addition it *must* be priced as the same cost of the copyright edition under contract. At any time during the life of this contract, if the publisher should charge less to others for materials under contract, publisher agrees to reduce the price to the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§723. Braille Accessibility (R.S. 17:1985; SCR 15 of 1997; SCR 149 of 1997)

A. SCR15, of the 1997 Regular Session, requires the State Board of Elementary and Secondary Education (SBESE) to coordinate a statewide system of providing braille books to visually impaired students by tracking braille books already available and supplying funds for those needed. In addition, SCR 149, of the 1997 Regular Session, provides for *access and use of technology* by blind and visually impaired students.

B. Publishers shall furnish, within 90 days of state adoption, to the American Printing House for the Blind computer diskettes for state-adopted literary subjects in an electronic text file from which braille or large print versions can be produced. Files will be used by blind or visually impaired students in Louisiana. Electronic text files for nonliterary subjects, including natural science, computer science, mathematics, and music must be provided when braille specialty code translation software is available.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 9. Appendix A

NOTE: Forms contained in the Appendix are subject to revision by SDE.

§901. Adoption Cycle

**Louisiana State Textbook Adoption Cycle:
Core Subject Areas Are Adopted Every Seven Years.**

1998-99	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
Social Studies K-12	Language Arts K-8	Language Arts 9-12	Vocational Agricultural	Science K-12	Foreign Language	Math K-12
	Grades 6-12 Literature	Reading K-8	Business Education	Health and Physical Education	Handwriting Music/Fine Arts	Computer Science
	Computer Literacy		Home Economics	Computer Literacy		
			Health Occupations			

NOTE: Separate categories for special education are no longer adopted.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 11. Appendix B
§1101. Publisher Affidavit

State of Louisiana
Department of Education
State Textbook Adoption

PUBLISHERS' AFFIDAVIT

I, _____ (printed name), an authorized representative of the _____ publishing company (printed name), do hereby certify the following:

- A) No representative of my company or affiliate company will try to influence the vote of a State Social Studies Adoption Committee member, either directly or through a third party;
- B) No item of value, no matter how insignificant, will be given to any *State Committee member* by my company after the Louisiana Department of Education (LDE) publicly discloses the names of the State Committee members. Items of value shall include money, trips, meals, mugs, book bags, pens, and any other item of value or token of appreciation.
In the event that my company has within *the last year* given any item of value to a person named as a State Committee member, I shall immediately (*within 10 days* of the naming of the State Social Studies Adoption Committee) inform the LDE in writing of such gift. The written correspondence shall describe the nature of such gift and shall be mailed to the LDE Textbook Administrator.
- C) I assure that my company has no affiliation or business arrangement with any State Adoption Committee member.
In the event that my company has within the *last year* had an affiliation with or any business arrangement with a person named as a State Committee member, I shall immediately (*within 10 days*) of the naming of the State Social Studies Adoption Committee) inform the LDE in writing of such relationship. The written correspondence shall describe the nature of the business arrangement or affiliation and will be mailed to the LDE Textbook Administrator.
- D) I assure that I will comply with all directives of the State Board of Elementary and Secondary Education and the LDE regarding materials to be provided and procedures to be followed during the State Social Studies adoption process.

Signature of Authorized Local Representative

Date

NOTE: REQUIRED FORM—Must be returned to LDE by _____
Date

Revised 1998

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 13. Appendix C
§1301. State Adoption Committee Affidavit

State of Louisiana
Department of Education
State Textbook Adoption

STATE ADOPTION COMMITTEE MEMBER'S AFFIDAVIT

I, _____ (printed name), do hereby certify the following:

A) No representative from any publisher or affiliated company will influence my vote, either directly or through a third party;

B) No item of value, no matter how insignificant, will be accepted from publishers or affiliated companies once the Louisiana Department of Education (LDE) discloses the names of the State Committee members. Items of value shall include money, trips, meals, mugs, book bags, pens and any other item of value or token of appreciation.

In the event that I have within the *last year* taken any item of value from a publisher submitting materials for adoption, I shall immediately (*within 10 days* of naming the State Textbook Adoption Committee) inform the LDE of such gift. The written correspondence shall describe the nature of the gift and shall be mailed to the LDE Textbook Administrator;

C) I assure the Department that I have no affiliation or business arrangement with any Publisher or its affiliated company. In the event that I have within the *last year* had an affiliation with or any business arrangement with a publisher submitting materials for adoption, I shall immediately (*within 10 days* of naming the State Textbook Adoption Committee) inform the LDE in writing of such relationship. The written correspondence shall describe the nature of the business arrangement or affiliation and shall be mailed to the LDE Textbook Administrator;

D) I assure that I will comply with all directives of the State Board of Elementary and Secondary Education and the LDE regarding materials to be provided and procedures to be followed during the state textbook adoption process;

E) I assure the Department that I will attend two mandatory meetings, the orientation to be held _____
_____ and full committee review _____
(Date) (Date)

Signature of State Adoption Committee Member (Date)

NOTE: REQUIRED FORM: Return to LDE by _____.
Attn: Jackie Bobbett
626 N. 4th Street, Room 740
Baton Rouge, LA 70802
PH: (225) 342-3599
FAX: (225) 342-3463

Revised 1998

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 15. Appendix D
§1501. Local Adoption Subcommittee Affidavit

State of Louisiana
Department of Education
State Textbook Adoption

LOCAL ADOPTION SUBCOMMITTEE MEMBER'S AFFIDAVIT

I, _____ (printed name), do hereby certify the following:

A) No representative from any publisher or affiliated company will influence my vote, either directly or through a third party;

B) No item of value, no matter how insignificant, will be accepted from publishers or affiliated companies once selected by the State Adoption Committee Member. Items of value shall include money, trips, meals, mugs, book bags, pens and any other item of value or token of appreciation.
In the event that I have within the *last year* taken any item of value from a publisher submitting materials for adoption, I shall immediately (*within 10 days*) inform the State Adoption Committee Member in writing of such gift. The written correspondence shall describe the nature of the gift and shall be mailed to the LDE Textbook Administrator;

C) I assure the Department that I have no affiliation or business arrangement with any Publisher or its affiliated company.
In the event that I have within the *last year* had an affiliation with or any business arrangement with a publisher submitting materials for adoption, I shall immediately (*within 10 days*) inform the State Adoption Committee Member in writing of such relationship. The written correspondence shall describe the nature of the business arrangement or affiliation and shall be mailed to the LDE Textbook Administrator;

D) I assure that I will comply with all directives of the State Board of Elementary and Secondary Education and the LDE regarding materials to be provided and procedures to be followed during the State Textbook adoption process;

Signature of Local Adoption Subcommittee Member

Date

Note: REQUIRED FORM: -- To be collected by State Committee Member

Revised 1998

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 17. Appendix E
§1701. Public Comment Form

State of Louisiana
Department of Education
Division of School Standards, Accountability, and Assistance
1998 State Textbook Adoption
PUBLIC COMMENT FORM

Forms must be typed or neatly printed. A separate form should be completed for each textbook.

The State is currently considering textbooks and materials of instruction for social studies classrooms, grades K-12. This form is intended to allow Louisiana citizens to make comments regarding those textbooks under consideration.

Publisher: _____ Subject Area: _____

Title: _____ Author: _____

Grade Level: _____ Copyright: _____ Name of person making comment: _____

Address: _____ Area Code/Telephone Number: Home () Work: ()

Parish of Residence: _____

Do you represent: Yourself An Organization (Name): _____

Do you have children of school age? Yes No;

If yes, what type of school do they attend? Public Non-Public (Receive State Funds) Non-Public (Does not Receive State Funds)

I would like to present my comments in the form of an oral presentation before the state committee(s) involved with adoption.

The following information must be completed:

I object to the following materials in this textbook. Please be specific, i.e. cite passages, pages, ideas, pictures, chart, copyright, etc. (Please use additional sheets if needed.)

Have you personally reviewed the material in its entirety? Yes No Segments Only

Is your objection to this material based upon: Personal exposure? Reports you have heard? Both?

Are you in anyway affiliated with a publishing company presenting material for adoption? Yes No

Would the publication have merit if the objectionable pages were removed? **Explain:** _____

Signature

Date

Form must be returned by 4:30 p.m. December 28, 1998 to Jackie Bobbett, State Textbook Administrator
Division of School Standards, Accountability, and Assistance Louisiana Department of Education
P. O. Box 94064
Baton Rouge, LA 70804-9064
FAX: (504) 342-5736

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 19. Appendix F
§1901. Notice Of Publisher's Failure To Deliver

STATE OF LOUISIANA
DEPARTMENT OF EDUCATION

NOTICE OF PUBLISHER'S FAILURE TO DELIVER
STATE ADOPTED TEXTBOOKS AND MATERIALS OF INSTRUCTION IN
ACCORDANCE WITH STATE CONTRACTS

School districts should complete the following form and *submit an original signed copy to the state textbook administrator* in the event that state adopted textbooks and materials of instruction are not delivered within 90 days of the last ordering cycle. Upon approval by the State Department of Education, local school systems may fine a publisher 1 percent of the outstanding balance of delinquent order. State contracts stipulate that failure to deliver textbooks and materials of instruction within 90 days of the last ordering cycle may render state contracts null and void.

Date _____

Name of School District _____ Name of Publisher _____

ISBN NO. _____ Title of Book _____

_____ (Mo/Day/Year)
Date order was placed (attach copy of invoice)

Briefly explain steps taken to date to trace/recover state adopted textbook order:

Signature District Superintendent

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 21. Appendix, State Laws

§2101. Free School Books

The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of this state at the elementary and secondary levels. (Article VIII, Section 13(A) of the Louisiana Constitution of 1984)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2103. Duties, Functions, And Responsibilities Of Board [R.S. 17:7(4)]

The board shall prescribe and adopt free school books and other materials of instruction for the children of this state at the elementary and secondary levels and all other schools and programs under its jurisdiction for which the legislature provides funds, in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2105. School Books Prescribed By Board; Contracts With Publishers [R.S. 17:8]

A.(1)(a) The board shall prescribe and adopt and shall exercise control and supervision over the distribution and use of free school books and other materials of instruction for use in elementary and secondary schools and special schools, as provided by Part IV of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950, and shall adopt necessary rules and regulations governing their use by schools, parish and city school boards, and parish and city superintendents of education. Such rules and regulations shall include but not be limited to a requirement that each parish and city school board shall adopt by not later than the beginning of the 1991-1992 school year procedures permitting any public school student to have use after regular school hours during the week and on weekends of any school book used to teach reading. Any public school student using any school book pursuant to the provisions of this Subsection shall be responsible for such school book. These procedures shall not be applicable to basal readers and programs.

(b)(i) All school students and persons responsible for a student's school attendance shall be accountable for exercising reasonable and proper care for and control over school books and other instructional materials, supplies, and equipment.

(ii) Notwithstanding any law or rule or regulation to the contrary, the governing authority of an elementary or secondary school may withhold the grades of a student who does not reimburse the school or school system for the students's failure to exercise reasonable and proper care for and control over school books or other instructional materials, supplies, and equipment.

(iii) In accordance with the authority granted to the State Board of elementary and Secondary Education by the provisions of this Subsection, the board shall formulate, develop, adopt, and provide for implementation by not later than January 1, 1998, by each governing authority of a public elementary or secondary school of appropriate policies and procedures consistent with the provisions of this Subparagraph, including meaningful sanctions and penalties, to enable school administrators to hold public school students and persons responsible for a student's school attendance accountable for failing to exercise reasonable and proper care for and control over any public school book or other instructional materials, supplies, and equipment.

(c) The board shall adopt lists of basic textbooks and shall adopt one or more lists thereof. It may authorize and approve revised editions of any school book it adopts.

(2) The board may authorize the Louisiana School of Math, Science and the Arts and other parish or city school boards with programs for gifted students to select and purchase textbooks not included on the lists adopted by the board pursuant to the provisions of this Section, provided that such authorization shall be on an ad hoc basis and shall be subject to prior approval by the board. Such purchases may be made using funds appropriated by the legislature for the purchase of textbooks as provided for herein.

B. The board shall prescribe and adopt and shall exercise supervision and control over the distribution and use of school books and other learning materials, supplies, and equipment for post secondary and vocational-technical schools and programs.

C. Each contract with a publisher for school books shall be awarded on a competitive basis. Each such contract shall be made without determinate date of expiration and shall be so made as to run without change until properly terminated. Each contract shall be so made as to authorize either party to terminate it upon ninety days notice. The mode of procedure for the announcement of bids, examining books, and awarding contracts shall be under the control of the board and in accordance with any applicable law.

D. Each contract shall stipulate that the publisher shall automatically reduce the net cost of textbooks in the state when the net cost of the publisher for books covered by the contract are reduced anywhere in the United States, so that no edition of that textbook shall at any time be sold in this state at a higher net cost than that received for that book elsewhere in the United States.

E. Each contract with a publisher shall stipulate that the book or books covered by the contract to be sold in this state shall be identical with the official samples filed with the board with respect to size, paper, binding, print, illustrations, subject matter, and all other particulars which may affect the value of said books. However, during the period of the contract, the board may approve revised editions of an adopted textbook or service at the bid price, which will authorize a publisher to provide such revisions.

F. Each contract with a publisher shall stipulate that whenever five thousand or more copies of a textbook of a single title and edition are to be purchased by the state from a single publishers during a twelve month period which shall be established by the board by rule, not less than eighty percent of the total number of the copies of such book purchased by the state shall be printed and bound by a printer licensed to do business and doing business within the state, provided that the publisher receives a timely bid made according to the publisher's bid-making requirements from such a printer and provided that the printer is able to print and bind such book in accordance with the manufacturer's specifications for state textbooks as promulgated by the state Department of Education and at a cost equal to or less than the unit cost per book for the same number of books made in a otherwise qualified bid by any out-of-state printer bidding on the same work. Whenever two or more printers in this state submit bids which would qualify all of them to print and bind textbooks pursuant to this Section and one such printer is a minority-owned business as defined in R.S. 39:1952(13), the minority-owned business shall be awarded not less than ten percent of the printing and binding required by this Section to be done in this state.

G. The state Department of Education shall be the depository in the state for books for the schools. The superintendent may do all things necessary and proper for the department to function as such depository, including but not limited to the power to enter into contracts or agreements and to acquire property, through lease or purchase, in which the depository is to be located, and to determine the location or locations of the depository. The superintendent may require publishers to maintain a depository in the

state or may contract, in accordance with the procedures for the letting of contracts set forth in Part II of Chapter 10 of title 38 of the Louisiana Revised Statutes, with any other public or private agency to act as the depository.

H. The state Department of Education shall require any depository with whom the department does business to provide the department a written summary of all purchase orders for textbooks received by the depository from the department. The depository shall transmit such summary within three business days whenever the department requests it to do so and the department shall make such a request upon the written request of any printer licensed to and actually doing business in Louisiana. Such a summary shall be a public record. The summary shall itemize the total number of copies each book which is the subject of a purchase order, the unit price of each book, the commissions paid to or the discounts received by the depository, and the publishers of each book.

I. The books shall be distributed to the several parish and city school boards from the depository on requisition of the superintendent of education for public elementary and secondary education.

J. (1) The board shall establish a procedure enabling any governing authority of a public elementary or secondary school, effective January 1, 1998, and thereafter, to order and receive textbooks approved by the board directly from textbook publishers. The procedure shall include but not be limited to permitting a public elementary or secondary school governing authority to contract with a textbook publisher and receive any applicable publisher's discount. However, any textbook purchased under the provision of this Paragraph shall be purchased at the same or lower price than such textbook can be purchased from any source other than the publisher.

(2) The board shall adopt necessary rules and regulations in accordance with the Administrative Procedure Act to implement the provision of the Subsection.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2107. Sale Of Textbooks No Longer In Use [R.S. 17.8]

A parish or city school board with the prior approval of the State Board of Elementary and Secondary Education, may sell any textbook or library book no longer in use in the school system to any person or entity for private use at a fee established by the parish or city school board. Funds derived from such sale shall be used by the parish or city school board solely for textbook or library book purchases.

If a textbook or library book has been out of use for over a year a parish or city school board may, with the approval of the [State] board, donate said book to any public hospital, any jail or prison, or any public institution, or to any individual for private use free of charge.

Any textbook or library book which a parish or city school board is unable to sell or donate after being out of use in excess of eighteen months, or any textbook or library book which is deemed by said board to be unusable or unsalable shall be disposed of in an appropriate manner. The reproduction of any textbook or library book no longer in use by a parish or city school system and the use of multiple copies of such books by organized groups or by an educational agency or entity is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2109. Operation Of Public Elementary And Secondary Schools In Accordance with State Law or Policy: Penalties For Violation [R.S. 17:172]

No free school books or other school supplies shall be furnished nor shall any state funds for the operation of school lunch programs, or any other school funds be furnished or given to any elementary or secondary school which violates the provision of this Section.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2111. Free School Books and other Materials of Instruction [R.S. 17:351]

A.(1) The State Board of Elementary and Secondary Education shall prescribe and adopt school books and other materials of instruction, which it shall supply without charge to the children of this state at the elementary and secondary levels out of funds appropriated therefore by the legislature in accordance with the requirements of Article VIII, Section 13(A) of the Constitution of Louisiana.

(2) The State Board of Elementary and Secondary Education shall prescribe and adopt those school books and other materials of instruction which accurately reflect the contributions and achievements of people of differing races.

(3) The State Board of Elementary and Secondary Education shall prescribe and adopt those school books and other materials of instruction which promotes an understanding of the history and values of the people of the United States and Louisiana, including the free enterprise system, private property, constitutional liberties values, and traditional standards of moral values.

B. The board also shall prescribe and supply school books and other materials of instruction for use by students attending vocational-technical schools and program under the jurisdiction of the board.

C.(1) The board shall establish rules and procedures for supplying schoolbooks and other materials of instruction approved by the State Board of Elementary and Secondary Education as required by this Section for children participating in any home study program approved by the board when available. Such rules and procedures shall include but not be limited to a requirement that any school books and other materials of instruction provided pursuant to this Subsection shall be made available only to the child or children of the parent or legal guardian obtaining approval for a home study program.

(2) The board shall provide a copy of such rules and procedures to any parent or legal guardian applying for approval of a home study program.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2113. Books, Films, Other School Materials; Screening Required [R.S. 17:352]

A. (1)The State Board of Elementary and Secondary Education, the State Department of Education or either of these shall take such action as is necessary to assure that all school books, films and booklets related thereto, other similar audio-visual devices, and any other similar materials of instruction are thoroughly screened, reviewed and approved as to their content by the State Board of Elementary and Secondary Education and the local parish or city school board concerned.

(2) The State Board of Elementary and Secondary Education or the State Department of Education shall take such action as is necessary to assure that any state committee or other group responsible for screening, reviewing, and evaluating any materials of instruction and computer and related technological equipment and supplies, including but not limited to any group created pursuant to the provision of R.S. 17:415.1, shall contain a membership not less than one-third of which are teachers as defined in R.S. 17:415.1.

B. The State Board of Elementary and Secondary Education shall maintain a copy of all approved textbooks and teaching materials. Such textbooks and teaching materials shall be maintained in the Department of Education for a period of one year following their initial approval and thereafter shall be maintained in the department's book depository during the time they are approved for use in Louisiana's public schools. Such textbooks are teaching materials shall be available for public inspection during regular office hours.

C. The State Board of Elementary and Secondary Education shall adopt rules and regulations to carry out the provisions of this Section.

D. Whoever intentionally violates any provision of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not to exceed six months, or both.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2115. Costs Of Administration; Textbooks and Instructional Material Distribution to Nonpublic School Students [R.S. 17:353]

A. Beginning with the 1993-1994 school year, each city and parish school board which disburses school library books, textbooks, and other materials of instruction to nonpublic school students shall submit to the superintendent of education such documentation as he may require to verify the administrative costs incurred by the school board in the disbursement of such books and instructional materials.

B. The verified costs of administration incurred by each city and parish school board shall be paid by the state.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2117. Required Reports and Records; Cost Reimbursement to Approved Nonpublic Schools (Reimbursement Of Required Costs) [R.S. 17:361]

The superintendent of education, in accordance with rules and regulations adopted by the Board of Elementary and Secondary Education, shall annually reimburse each approved nonpublic school, for each school year beginning on and after July, 1979, an amount equal to the actual cost incurred by each such school during the preceding school year for providing school services, maintaining records and completing and filing reports required by law, regulation or requirement of a state department, state agency, or local school board to be rendered to the state, including but not limited to any forms, reports or records relative to school approval or evaluation, public attendance, pupil health and pupil health testing, transportation of pupils, federally-funded educational programs including school lunch and breakfast programs, school textbooks and supplies, library books, pupil appraisal, pupil progress, transfer of pupils, teacher certification, teacher continuing education programs, unemployment, annual school data, and any other education-related data which are not or hereafter shall be required of such nonpublic school by law, regulation or requirement of a state department, state agency, or local school board.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2119. Applications For Reimbursement [R.S. 17:362]

Each school which seeks reimbursement pursuant to this Part shall submit to the superintendent an application therefore, together with such additional reports and documents as the superintendent may require, at such times, in such form, and containing such information as the superintendent may prescribe in order to carry out the purposes of this Part.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2121. Maintenance Of Records [R.S. 17:363]

Each school which seeks reimbursement pursuant to this Part shall maintain a separate account or system of accounts for the expenses incurred in rendering the required services for which reimbursement is authorized by R.S. 17:361. Such records and accounts shall contain such information and be maintained in accordance with regulations adopted by the board, but for expenditures made in the school year 1979-1980, the application for reimbursement made in 1980, pursuant to R.S. 17:361 shall be supported by such reports and documents as the

superintendent shall require. In promulgating such regulations concerning records and accounts and in requiring supportive documents with respect to expenditures incurred in the school year 1979-1980, the superintendent shall implement the audit procedures provided in R.S. 17:365. The records and accounts supporting reimbursement for each school year shall be preserved at the school until the completion of such audit procedures.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2123. Payment [R.S. 17:364]

No payment to a school shall be made pursuant to this Part until the superintendent has approved the application submitted pursuant to R.S. 17:362.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2125. Audit [R.S. 17:365]

No application for reimbursement under this Part shall be approved except upon such audit of vouchers or other documents by the superintendent as is necessary to insure that such payment is lawful and proper.

The legislative auditor may from time to time examine, in accordance with the provision of R.S. 24:513, any and all accounts and records of a school which have been maintained pursuant to this Part in support of an application for reimbursement for the purpose of determining the cost to such school of rendering the services referred to in R.S. 17:361. If after such audit it is determined that any school has received funds in excess of the actual cost of providing such services, such school shall immediately reimburse the state in such excess amount.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2127. Materials; Adoption Procedures [R.S. 17:415.1]

A. Any interested citizen may request that his name be included on the mailing list for textbook adoption information by writing to the Director of the Bureau of Materials of Instruction and Textbooks. State Department of Education, Capitol Station, Baton Rouge, Louisiana. Any person who has made this request shall be timely notified of the name and address of each member of all textbook adoption committees and the Textbook and Media Advisory Council, the times, places, and agenda of all committee and council meetings, and the titles, authors, and publishers of all textbooks proposed for adoption.

B. (1) All textbook adoption committees appointed by the superintendents of elementary and secondary education shall contain a membership not less than one-third of which are teachers, not less than one-third of which are parents who are not public educators, and the remainder of which are other persons. All meetings of textbook adoption committees and the Textbook and Media Advisory Council shall be open to the public. Any member of the public may attend and file written or make oral objections to any textbook under consideration. The State Board of Elementary and Secondary Education shall adopt a form whereby any member of the public may file written objections to any textbook being considered for adoption.

(2) For purposes of this Subsection, the term "teacher" shall mean any persons employed by a city or parish school board who, as a condition of employment, is required to hold a valid teaching certificate issued by the Department of Education.

C. During the period commencing on September 1 and ending December 31 of each year, all textbooks being considered for adoption shall be placed by the Department of Education in a cooperating public library in New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, Houma, and any other city designated by the superintendent of elementary and secondary education. Any interested person may inspect and review the books during the period when they are on display.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2129. SCR 15 of 1997, Regular Session

The Legislature of Louisiana urges and requests the State Board of Elementary and Secondary Education to coordinate a statewide system of providing braille books to visually impaired students by tracking the braille books already available and providing funding for those books which are needed.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2131. SCR 149 of 1997, Regular Session

The Legislature of Louisiana hereby urges and requests that information technology programs and activities of the state which are supported in whole or in part by public funds incorporate aspects which facilitate access to and use of such technology by the blind and visually impaired. In addition, the Louisiana Data Base Commission and other state entities involved in the development of information technology adopt guidelines which shall ensure the following, to the extent feasible,

(1) That information technology, equipment, or software used by employees or program participants who are blind or visually impaired can present information for effective, interactive control and use by both visual and non-visual means; is compatible with equipment and software used by other individual with whom the blind or visually impaired must interact; and can be integrated into the network or networks used to share communications among employees or program participants.

(2) That information technology used in the dissemination of services to the public provides blind or visually impaired individuals with access, including interactive use of equipment and services, which is equivalent to that provided to individuals who are not blind or visually impaired; and that such information technology is designed to present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use.

(3) That the procurement of information technology, whether through contract or agreement, shall be accomplished so as to provide equivalent access for effective use by both visual and non-visual use; and can be integrated into networks for obtaining, retrieving, and disseminating information used by individual who are not blind or visually impaired.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2133. Books for School; Special Plates [R.S. 47:463.46]

A. The Secretary of the Department of Public Safety and Corrections shall establish a prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, and vans for the purpose of promoting support for elementary and secondary education. The Secretary shall determine the design of the special prestige license plate issues under the provisions of this Section, provided such design shall bear the words "Helping Schools" and include a logo which is a symbol for reading programs in education.

B. The prestige plate shall be issued upon application to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be \$25.00 annually in addition to the regular fee charged under the provisions of R.S. 47:463.

D. The revenue from the additional \$25.00 fee imposed by Subsection C of this Section, shall be deposited immediately upon receipt into the state treasury. After compliance with the requirements of Article 7, Section 9(B) of the Constitution of Louisiana relative to the Bond, Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited shall be credited to the State Board of Elementary and Secondary Education and shall be used solely

for the purchase of textbooks to be used in approved elementary and secondary schools of the State. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

E. The superintendent of the Department of Education shall promulgate rules and regulations as necessary to implement the provisions of this Subsection relative to the purchase and distribution of textbooks.

F. The secretary shall promulgate rules and regulations to implement the provisions of Subsections A, B, C and D of this Section.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Interested persons may submit written comments until 4:30 p.m., June 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1794—State Textbook Adoption
Policy and Procedure Manual**

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

Prior to this rule, many districts have continued to use the 1990 state average textbook expenditure of \$27.02 per pupil as a basis for textbook acquisitions. Newly developed standards and guidelines are expected to result in a greater proportion of a local district's state allocation, through the Minimum Foundation Program (MFP), being dedicated for textbook acquisitions. In addition, a shift in workload for local school systems is expected as a result of requirements to learn new policy requirements, develop more thorough and useful plans of implementation, adopt the latest information via basal textbooks in core subject areas (science, math, language arts and social studies) and requirements to develop and maintain an ongoing textbook inventory system. Implementation of proposed changes to the LEA are expected to be cost neutral.

The cost of this implementation to state governmental units will be limited to the cost of reproducing this document for dissemination with minimal impact on operational costs to run the textbook program under new guidelines. This fifty page document has an estimated cost for copying and postage of \$2,000. This document will also be made available electronically, via the Internet, allowing districts to download or view it on the Department of Education website, thus reducing recurring costs of reproduction. Operational costs that incorporate new procedures are estimated to increase \$2,400 which covers additional workshops and materials needed to carry out new procedures.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$200. Funds are available.

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

Estimated effects on state revenue collections (self-generated funds) are expected to result from annual participation fees assessed publishers participating in the textbook adoption process (e.g., 24 publishers X \$100 = \$2,400. Local revenue collections may increase as a result of local authority to assess

publishers a 1% fine on outstanding balances of late textbook deliveries. However, no prior data exists to support a baseline estimate.

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

Teachers and students will benefit directly from having access to the latest instructional materials/information and will benefit indirectly from methods that improve selection, acquisition and distribution of such materials. School districts will benefit directly from improved communications via reporting requirements that will also help decision making at the local level. New standards and guidelines stipulate that textbooks must be adopted in core subject areas within a three year period. Therefore, more books ordered by the LEA will increase profits for publishers with state-adopted instructional materials in core subject areas. Each publisher will be assessed a participation fee of \$100 at the state level and face fines imposed at the local level of 1% of the outstanding balance for late textbook deliveries. No prior data exists to support estimated costs for late deliveries.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No estimated effect on competition and employment is expected as a result of the proposed rule.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9904#070

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 2000—Educational Framework for Louisiana's Agriscience/Agribusiness/FFA Program (LAC 28:I.930)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement, Educational Framework for Louisiana's Agriscience/Agribusiness/FFA Program, Bulletin 2000. The Educational Framework for Louisiana's Agriscience/Agribusiness/FFA Program will be referenced in the Louisiana Administrative Code as follows:

Title 28

EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§930. State Content Standards**

A. - G. ...

H. Bulletin 2000—Agriscience/Agribusiness Content Standards

1. Bulletin 2000—Standards for Agriscience/Agribusiness/FFA Program in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks which will be used by Local Agencies (LEAs) as a guide for developing curriculum at the local level. These standards and benchmarks define what Louisiana students should know and be able to do.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Bulletin 2000, Educational Framework for Louisiana Agriscience/Agribusiness/FFA Program will be published and disseminated to all local education agencies and regional services centers. A complete text of the standards may be viewed in the Office of the State Register, 1051 North Third Street, Baton Rouge; the Office of the State Board of Elementary and Secondary Education; or the Office of Standards and Assessment, State Department of Education.

Interested persons may submit comments until 4:30 p.m., June 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 2000—Educational Framework for
Louisiana's Agriscience/Agribusiness/FFA Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The primary cost to implement the Agriscience/Agribusiness/FFA Frameworks is for printing and disseminating the standards to all programs and other interested parties. The estimated cost of printing is \$4.00 x 500 copies for a total of \$2000.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits that directly affect any person or nongovernmental groups other than the indirect effects of improved student preparation for the workforce.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The Agriscience Framework implementation will not affect competition. However, students should gain improved employment readiness and skills, which will enhance Louisiana businesses.

Marlyn Langley
Deputy Superintendent
9904#065

H. Gordon Monk
Staff Director
Management and Finance

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

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

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 1999, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Tuition Opportunity Program for Students
(TOPS)—Higher Education Scholarship and Grant Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation cost associated with publishing these rule revisions in the *Louisiana Register* as emergency, notice and rule is approximately \$100. Costs for Funding for TOPS-Teacher awards will not increase as a result of this rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections is anticipated to result from this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
TOPS-Teacher applicants will have their years in college accorded more weight in their ranking as a result of this rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn
Executive Director
9904#006

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Organic Solvents (LAC 33:III.2123)(AQ189)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2123 (Log Number AQ189).

This proposed rule will clarify the wording of LAC 33:III.2123.B.1. LAC 33:III.2123.D.6 provides exemptions on emissions of VOCs for surface coating facilities in attainment and nonattainment areas of Louisiana and refers to LAC 33:III.2123.C.1-10 to determine emission limitations. This citation is corrected to include Paragraph 11, also. The basis and rationale for this proposed rule are to make a grammatical clarification and correct a reference oversight.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S. 49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter B. Organic Solvents

§2123. Organic Solvents

* * *

[See Prior Text in A-B]

1. For the purposes of this Subsection, a photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

* * *

[See Prior Text in B.1.a-D.5]

6. Surface coating facilities on any property in Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes which when controlled have a potential to emit at maximum production a combined weight (total from the property) of volatile organic compounds less than 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C.1-11 of this Section. Surface coating facilities on any property in parishes other than Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge which when uncontrolled have a potential to emit a combined weight of volatile organic compounds less than 100 pounds (45 kilograms) in any consecutive 24-hour period are exempt from the provisions of Subsection C.1-11 of this Section.

* * *

[See Prior Text in D.7-G]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), LR 25:

A public hearing will be held on May 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ189. Such comments must be received no later than June 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ189.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Organic Solvents

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units as a result of this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result of this proposal.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This rule revision includes an exemption that was inadvertently left out in a prior rule revision. Affected facilities include surface coating for marine vessels and oilfield tubular and ancillary oilfield equipment. This oversight was brought to our attention by an affected facility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal will have no effect on competition or employment.

Gus Von Bodungen
Asst. Secretary
9904#034

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Environmental Quality
Office of Water Resources
Water Pollution Control Division**

**Procedures for Modifying Approved
POTW Pretreatment Programs
(LAC 33:IX.2715, 2721 and 2735)(WP031*)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2715, 2721, and 2735 (WP031*).

This proposed rule is identical to a federal regulation found in 62 FR 38405-38415, Number 137, July 17, 1997, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed rule corrects typographical errors and omissions made in WP030*, which was a final rule in November 1998. These changes will equate Louisiana regulations for streamlined procedures for modifying approved pretreatment programs to the EPA federal regulations. The basis and rationale for this proposed rule are to mirror the federal regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Subchapter T. General Pretreatment Regulations for

Existing and New Sources of Pollution

§2715. Pretreatment Program Requirements:

Development and Implementation by POTW

* * *

[See Prior Text in A - F.5.d]

6. The POTW shall prepare and maintain a list of its industrial users meeting the criteria in LAC 33:IX.2705.*Significant Industrial User*. Subparagraph a. The list shall identify the criteria in LAC

33:IX.2705.*Significant Industrial User*, Subparagraph a applicable to each industrial user and, for industrial users meeting the criteria in LAC 33:IX.2705.*Significant Industrial User*.a.ii shall also indicate whether the POTW has made a determination in accordance with LAC 33:IX.2705.*Significant Industrial User*. Subparagraph b that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the approval authority in accordance with LAC 33:IX.2717 as a nonsubstantial program modification in accordance with LAC 33:IX.2735.D. Modifications to the list shall be submitted to the approval authority in accordance with LAC 33:IX.2723.I.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), LR 25:

§2721. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization.

* * *

[See Prior Text in A - B.1.a]

i. mailing notices of the request for approval of the submission to designated 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

ii. publication of a notice of request for approval of the submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that provides meaningful public notice.

* * *

[See Prior Text in B.1.b - F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 25:

§2735. Modification of POTW Pretreatment Programs

* * *

[See Prior Text in A - B.1]

a. modifications that relax POTW legal authorities (as described in LAC 33:IX.2715.F.1), except for modifications that directly reflect revision to the general pretreatment regulations, LAC 33:IX.Chapter 23.Subchapter T or Subchapter N, and reported in accordance with Subsection D of this Section;

b. modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported in accordance with Subsection D of this Section. Maximum Allowable Industrial Loadings mean the total mass of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified by the POTW) may discharge in accordance with limits developed under LAC 33:IX.2709.C;

* * *

[See Prior Text in B.1.c - B.1.g]

C. Approval Procedures for Substantial Modifications

* * *

[See Prior Text in C.1 - C.2]

3. The approval authority need not publish a notice of decision under LAC 33:IX.2721.E, provided the notice of request for approval under LAC 33:IX.2721.B.1 states that the request will be approved if no comments are received by a date specified in the notice, no substantial comments are received, and the request is approved without change.

* * *

[See Prior Text in C.4 - D.3]

E. Incorporation in the Permit. All modifications shall be incorporated into the POTW's LPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with LAC 33:IX.2385.A.7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), LR 25:

A public hearing will be held on May 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by WP031*. Such comments must be received no later than May 25, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP031*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaeregs.htm>.

Linda Korn Levy
Assistant Secretary

9904#047

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

Expired Drugs (LAC 46:LXXXV.705)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.705 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, La. R.S. 37:1518 et seq. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§705. Prescribing and Dispensing Drugs

A. - G. ...

H. It shall be a violation of the rules of professional conduct under R.S. 37:1526(14) for a veterinarian in the course of his veterinary practice to use or dispense any products, including drugs, which are expired.

I. It shall be a violation of the rules of professional conduct under R.S. 37:1526(14) for a veterinarian to be in possession of drugs or other medical products which are over six months past their expiration date unless the materials are obviously removed from use and it can be documented that said drugs are in the process of being returned or otherwise disposed of.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 6:71 (February 1980), amended LR 16:226 (March 1990), LR 19:1329 (October 1993), LR 20:1381 (December 1994), LR 23:1686 (December 1997), LR 24:1932 (October 1998), LR 25:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on May 27, 1999. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on May 27, 1999, at 9:00 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801.

Charles B. Mann
Executive Director

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

RULE TITLE: Expired Drugs

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated \$120). The veterinary profession will be informed of this rule change via the board's regular newsletter or other direct mailings, which are already a budgeted cost of the board.

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

There will be no effect on revenue collections of state or local governmental units. There will be no revenue impact as no increase in fees will result from the amendment.

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

There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on employment and competition.

Charles B. Mann
Executive Director
9904#020

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

**Partnerships, Corporations, and Limited Liability
Companies (LAC 46:LXXXV.1015)**

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.1015 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, La. R.S. 37:1518 et seq. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXXV. Veterinarians

Chapter 10. Rules of Professional Conduct

**§1015. Partnerships, Corporations, and Limited
Liability Companies**

In the formation of partnerships, corporations, or limited liability companies for the practice of veterinary medicine, no person shall be admitted as a partner or owner who is not a member of the veterinary profession, duly licensed to practice in this state, and amenable to professional discipline. No person shall be held out as a practitioner of veterinary medicine or a member of the firm who is not so admitted. In

the selection and use of a firm name, no false or misleading name shall be used. Partnerships between veterinarians and members of other professions or nonprofessional persons shall not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine. Corporations or limited liability companies created or owned by licensed veterinarians in conjunction with non-veterinarians shall not be permitted if a part of the company's function consists of the practice of veterinary medicine

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:229 (March 1990), amended LR 25:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on May 27, 1999. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on May 27, 1999, at 9:00 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801.

Charles B. Mann
Executive Director

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

**RULE TITLE: Partnerships, Corporations, and Limited
Liability Companies**

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated \$120). The veterinary profession will be informed of this rule change via the board's regular newsletter or other direct mailings, which are already a budgeted cost of the board.

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

There will be no effect on revenue collections of state or local governmental units. There will be no revenue impact as no increase in fees will result from the amendment.

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

There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

Charles B. Mann
Executive Director
9904#019

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Management and Finance

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 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. 49:950 et seq.

This proposed 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 proposed rule provides for the establishment of the process for designating CAHs.

The full text of this Notice of Intent can be viewed in full in the Emergency Rule section of this issue of the *Louisiana Register*.

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.

A public hearing on the proposed rule will be held at 10:00 a.m., May 25, 1999 in the Education and Training Room (3rd floor) at the Department of Health and Hospitals, 1201 Capitol Access Road, Baton Rouge, LA 70802. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Critical Access Hospitals

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- Implementation costs to the Department of Health and Hospitals will be minimal since the hospitals will be certified for reasonable Medicare cost reimbursement. The initial certification cost for each facility will be approximately \$1,200; recertification will cost approximately \$800 per facility. Both certification and recertification will be 90 percent Medicare funded. The 10 percent State share of the certification (\$120 per facility) and recertification cost (\$80 per facility) would cost the State \$1,560 if thirteen hospitals participate. Thereafter, the yearly cost to certify thirteen hospitals would be approximately

\$1,040. Other management and operation costs will be minimal and shall be absorbed by existing staff and within the existing budget.

Printing of the Notice of Intent is expected to cost approximately \$320.

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

The federal Health Resources Services Administration (HRSA) will provide \$200,000 through the State Office of Rural Health grant to provide technical assistance (such as cost incurred in financial assessment, development of networks, support training of local health care professionals) in FY 99-00. Louisiana will receive \$500,000 in grant funds from HRSA for FY 00-01 and anticipate similar funding for out years.

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

The Critical Access Hospital Program will allow communities, who already have difficulty with health care access, to maintain some level of outpatient and inpatient care. This certification will allow hospitals to limit services and network with other health care facilities for other services. The hospital will save money as it will not have to meet all hospital standards regarding hours and days opened except as required for emergency and nursing staff for any inpatient in the facility and provide some services part-time. The grant will be used to reimburse some of the small rural hospitals cost in planning, implementing and meeting the requirement of the different certification.

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

There is no competition for the services that these hospitals provide in the community. If they close, no inpatient services will be available in the small rural communities. Since forming networks with other providers as well as larger acute care hospitals is a program requirement, this program is expected to result in services being delivered cost effectively in an appropriate setting.

Participation in the program will allow retention of some professional and skilled staff who would be unemployed if the facility closed.

David W. Hood
Secretary
9904#066

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Durable Medical Equipment—Peak Flow Meters

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Service Financing currently provides coverage for durable

medical equipment. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. Currently, the portable manual peak flow meter used for the treatment of asthma is not covered. However, prior authorization for this medical device may be considered for recipients under the age of 21 since Early Periodic Screening Diagnosis and Treatment (EPSDT) regulations require the provision of any medically necessary service for recipients under the age of 21. Inclusion of the portable manual peak flow meter in the list of covered services will ensure availability to recipients of all ages, subject to medical necessity review and prior authorization by the Prior Authorization unit. Therefore, the Bureau proposes to extend Medicaid coverage under the Durable Medical Equipment Program to include portable manual peak flow meters used for the treatment of asthma.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing expands coverage under the Durable Medical Equipment Program to include the portable manual peak flow meter used for the treatment of asthma. Portable manual peak flow meters shall be subject to prior authorization when prescribed by a physician for the measurement of lung function as part of an effective asthma management program.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Durable Medical Equipment—Peak Flow
Meters**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this proposed rule will increase expenditures in the Durable Medical Equipment Program by approximately \$6,267 for SFY 1999-2000, \$6,406 for SFY 2000-2001, and \$6,588 for SFY 2001-2002. Included in SFY 1999-2000 is \$40 for the state's administrative expense of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections is approximately \$14,773 for SFY 1999-2000, \$15,183 for SFY 2000-2001, and \$15,648 for SFY 2001-2002. Included in SFY 1999-2000 is

\$40 for the federal share of promulgating this proposed rule and the final rule.

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

Medicaid recipient with asthma will benefit from having access to portable manual peak flow meter for home treatment. The providers who supply these devices will be able to receive reimbursement. Implementation of this proposed rule will result in an increase in payments to providers in the Durable Medical Equipment Program by approximately \$21,040 for SFY 1999-2000, \$21,589 for SFY 2000-2001, and \$22,236 for SFY 2001-2002.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9904#050

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid—Mucus Clearance (Flutter) Device

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Service Financing currently provides coverage for durable medical equipment. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. Currently, the mucus clearance (flutter) device, used to facilitate the removal of mucus from the lungs for conditions such as Chronic Obstructive Pulmonary Disease and Cystic Fibrosis, is not covered under the Durable Medical Equipment Program. However, prior authorization for this medical device may be considered for recipients under the age of 21 since Early Periodic Screening Diagnosis and Treatment (EPSDT) regulations require the provision of any medically necessary service for recipients under the age of 21. Inclusion of this mucus clearance (flutter) device in the list of covered services will ensure availability to recipients of all ages, subject to medical necessity review and prior authorization by the Prior Authorization unit. Therefore, the Bureau proposes to expand Medicaid coverage under the Durable Medical Equipment Program to include mucus clearance (flutter) devices for the treatment of lung diseases or conditions producing retained secretions.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing expands Medicaid coverage under the Durable Medical Equipment Program to include mucus clearance (flutter) devices used in

the treatment of lung diseases or conditions producing retained secretions. Small hand held mucus clearance (flutter) devices shall be subject to prior authorization when prescribed by a physician for recipients with lung diseases or conditions producing retained secretions.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

RULE TITLE: Medicaid—Mucus Clearance Flutter Device

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this proposed rule will increase expenditures in the Durable Medical Equipment Program by approximately \$6,018 for SFY 1999-2000, \$6,149 for SFY 2000-2001, and \$6,325 for SFY 2001-2002. Included in SFY 1999-2000 is \$40 for the state's administrative expense of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections is approximately \$14,183 for SFY 1999-2000, \$14,576 for SFY 2,000-2001, and \$15,021 for SFY 2001-2002. Included in SFY 1999-2000 is \$40 for the federal share of promulgating this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Medicaid recipients with lung diseases will benefit from having access to mucus clearance (flutter) devices. The providers who supply these devices will be able to receive reimbursement. Implementation of this proposed rule will result in an increase in payments to providers in the Durable Medical Equipment Program by approximately \$20,201 for SFY 1999-2000, \$20,725 for SFY 2000-2001, and \$21,346 for SFY 2001-2002.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Thomas D. Collins
Director
9904#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Relocation of Hospital Service District Beds
(LAC 48:I.12501)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by R.S. 40:2116 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act.

In some parishes there may be areas far away from existing nursing facility beds that participate in Medicaid. The prospects for developing additional Medicaid participating nursing facility beds in these areas are limited by the moratorium on new approvals of additional Medicaid nursing facility beds imposed by La. R.S. 40:2116, and by the current rules providing for facility need review, which prohibit relocation of a portion of a nursing facility's approved beds without the surrender of those approved beds not relocated.

The department proposes changes in the rules which provide for facility need review (LAC 48:I.12501 through 12505) published on August 20, 1995 (*Louisiana Register*, Volume 21, Number 8), in order to allow a hospital service district to relocate a portion of the Medicaid beds in an existing nursing facility it owns to another location within the service area, and within the boundaries of the hospital service district. This relocation should make these beds more accessible to some individuals who live within the service area, but far away from existing Medicaid beds.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing amends §12501 entitled Introduction as follows:

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

§12501. Introduction

A. ...

B. Definitions. When used in this rule the following terms and phrases shall have the following meanings unless the context requires otherwise:

* * *

Hospital Service District—a political subdivision of the State of Louisiana created or authorized pursuant to R.S. 46:1051 et seq.

* * *

F.1. - 7. ...

8. A nursing facility's approved beds may be relocated only under the following conditions.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Relocation of Hospital Service District Beds**

a. The approved beds cannot be relocated to a different service area.

b. Subject to the exception provided in Subparagraph c, all of the approved beds must be relocated to a single new location, and the approval of any beds not relocated to that new location shall be revoked.

c. Notwithstanding the requirements of Subparagraph b, a partial relocation of approved beds may be effected if the following conditions are met:

i. the approved beds are in a nursing facility owned by a hospital service district as of the date of adoption of this Rule and at the time of the partial relocation;

ii. the partial relocation meets the requirements of subparagraph a;

iii. the approved beds are relocated to the site of a currently operational hospital owned by the same or a different hospital service district. If the new location is owned by a different hospital service district, the ownership of the approval of the relocated beds must be transferred to the hospital service district to which the beds are relocated;

iv. no more than 25% of the nursing facility's approved beds are relocated.

d. If, within five years after a partial relocation to a hospital site pursuant to Subparagraph c, the hospital located at that site ceases operations, the relocated beds shall revert to the original facility from which they were relocated. This provision shall not apply to relocations which require a transfer of ownership of the approval of the relocated beds.

e. A hospital service district may relocate or transfer the ownership of the approval of approved beds pursuant to Subparagraph c only once.

f. Subparagraphs c, d, and e are not intended to prohibit or restrict the relocation of all of the approved beds in a nursing facility by a hospital service district in accordance with Subparagraphs a and b.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:806 (August 1995), amended LR 25:

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding the proposed rule.

A public hearing will be held on this matter on Friday, May 28, 1999 at 9:30 am in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

David W. Hood
Secretary

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

The cost for promulgation of the proposed rule is estimated to be \$260.00. The only other estimated costs involved would be construction or renovation costs that might be incurred if a hospital service district were to construct a new facility or renovate an existing health care facility to accommodate relocated nursing facility beds.

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

Implementation of this rule will have no known effect upon revenue collections of either State or Local governmental units.

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

There may be economic benefits that result from the building of a new facility. The other economic benefit to directly affected persons or nongovernmental groups would be the reduction in travel cost for family members/others who visit residents in relocated nursing facility beds.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be an increase in short term employment if one or more of the nursing homes owned or operated by hospital service districts builds a new nursing home within which to house relocated beds. Long term employment changes will consist primarily of only a shift within the service area as staff members relocate from the presently operated facility to the facility to contain relocated beds.

Thomas D. Collins
Director
9904#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Surveillance and Utilization Review Systems (SURS)
(LAC 50:II.Chapter 41)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing previously published regulations regarding prepayment and post-payment review of claims submitted to the Department and or its Fiscal Intermediary by providers in October 1978 and later revised these regulations in July 1980 (*Louisiana Register*, Volumes 4 and 6, Numbers 10 and 7). The Department has decided that it is necessary to revise and

expand its existing regulations regarding prepayment and post-payment review of claims made or submitted to the Department or its Fiscal Intermediary by provider(s) of goods, services, and supplies who seek or may seek payment or reimbursement from the Louisiana Medicaid Program for the providing of or claiming to provide goods, services, or supplies and administrative sanctions of providers and others who violate the laws, regulations, rules, policies or procedures governing the Louisiana Medicaid Program. Therefore, the Department proposes to adopt the following revised regulations in accordance with R.S. 49:951 et seq. and R.S. 46:437.4.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 1. General /Program Integrity

Chapter 41. Surveillance and Utilization Review Systems (SURS)

Subchapter A. General Provisions

§4101. Foreword

A. The Medical Assistance Program is a four party arrangement; the taxpayer, the government, the beneficiaries and the providers. The Secretary of the Department of Health and Hospitals, through this regulation, recognizes:

1. the obligation to the taxpayers to assure the fiscal and programmatic integrity of the Medical Assistance Program. The Secretary has zero tolerance for fraudulent, willful, abusive or other ill practices perpetrated upon the Medical Assistance Program by providers, providers-in-fact and others, including beneficiaries. Such practices will be vigorously pursued to the fullest extent allowed under the applicable laws and regulations;

2. the responsibility to assure that actions brought in pursuit of providers, providers-in-fact and others, including beneficiaries, under this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment. Providers, providers-in-fact and others, including beneficiaries, must recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures; and

3. that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation, the department has an obligation to demonstrate that the pattern of incorrect submissions are material, as defined under this regulation, prior to imposing a fine or other monetary sanction which is greater than the amount of the identified overpayment resulting from the pattern of incorrect submissions. In the case of an action brought for a pattern of incorrect submissions, providers and providers-in-fact must recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions, the department may impose judicial interest on any outstanding recovery or recoupment or reasonable cost and expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

B. The Department of Health and Hospitals, Bureau of Health Services Financing (BHSF) has adopted this regulation in order to:

1. establish procedures for conducting surveillance and utilization review of providers and others;

2. define conduct in which providers and other cannot be engaged;

3. establish grounds for sanctioning providers and others who engage in prohibited conduct; and

4. establish the procedures to be used when sanctioning or otherwise restricting a provider and others under the Louisiana Medicaid Program.

C. The purpose of this regulation is to assure the quality, quantity, and need for such goods, services, and supplies and to provide for the sanctioning of those who do not provide adequate goods, services, or supplies or request payment or reimbursement for goods, services, or supplies which do not comply with the requirements of federal laws, federal regulations, state laws, state regulations or the rules, procedures, criteria or policies governing providers and others under the Louisiana Medicaid Program;

D. A further purpose of this regulation is to assure the integrity of the Louisiana Medicaid Program by providing methods and procedures to:

1. prevent, detect, investigate, review, hear, refer, and report fraudulent or abusive practices, errors, over-utilization, or under-utilization by providers and others;

2. impose any and all administrative sanctions and remedial measures authorized by law or regulation, which are appropriate under the circumstances;

3. pursue recoupment or recovery arising out of prohibited conduct or overpayments;

4. allow for informal resolution of disputes between the Louisiana Medicaid Program and providers and others;

5. establish rules, policies, criteria and procedures; and

6. other functions as may be deemed appropriate.

E. In order to further the purpose of this regulation the Secretary may establish peer review groups for the purpose of advising the Secretary on any matters covered in this regulation.

F. Nothing in this regulation is intended, nor shall it be construed, to grant any person any right to participate in the Louisiana Medicaid Program which is not specifically granted by federal law or the laws of this state or to confer upon any person's rights or privileges which are not contained within this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4103. Definitions

A. The following specific terms shall apply to all those participating in the Louisiana Medicaid Program, either directly or indirectly, and shall be applied when making any and all determinations related to this and other departmental

regulations, rules, policies, criteria, and procedures applicable to the Louisiana Medicaid program and its programs.

Affiliates—any person who has a direct or indirect relationship or association with a provider such that the provider is directly or indirectly influenced or controlled by the affiliate or has the power to do so. Any person with a direct or indirect ownership interest in a provider is presumed to be an affiliate of that provider. Any person who shares in the proceeds or has the right to share in the proceeds of a provider is presumed to be an affiliate of that provider unless that person is a spouse or a minor child of the provider and has no other affiliation with the provider other than that of being a family member of the provider.

Agent—a person who is employed by or has a contractual relationship with a provider or who acts on behalf of the provider.

Agreement to Repay—a formal written and enforceable arrangement to repay an identified overpayment, interest, monetary penalties or costs and expenses.

Billing Agent—any agent who performs any or all of the provider's billing functions. Billing agents are presumed to be an agent of the provider.

Billing or Bill—submitting, or attempting to submit, a claim for goods, supplies, or services.

Claim—any request or demand, including any and all documents or information required by federal or state law or by rule made against Medical Assistance Program funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. In the case of a claim based on a cost report, any entry or omission in a cost report, book of account or other documents used or intended to be used to support a cost report shall constitute a claim. Each claim may be treated as a separate claim, or several claims may be combined to form one claim.

Claims or Payment Review—the process of reviewing documents or other information or sources required or related to the payment or reimbursement to a provider by the department, BHSF, SURS or the fiscal intermediary in order to determine if the bill or claim should be or should have been paid or reimbursed. Payment and claim reviews are the same process.

Contractor—any person with whom the provider has a contract to perform a service or function on behalf of the provider. A contractor is presumed to be an agent of the provider.

Corrective Action Plan—a written plan, short of an administrative sanction, agreed to by a provider, provider-in-fact or other person with the department, BHSF or, Program Integrity designed to remedy any inefficient, aberrant or prohibited practices by a provider, provider-in-fact or other person. A corrective action plan is not a sanction.

Department—the Louisiana Department of Health and Hospitals.

Deputy Secretary—the Deputy Secretary of the department or authorized designee.

Director of Program Integrity or Assistant Director of Program Integrity—the individual whom the Secretary has

designated as the director, program manager or section chief of the Program Integrity Division or the designated assistant to the Director of Program Integrity Division respectively or their authorized designee.

Director of the Bureau of Health Finance Services—the director of BHSF or authorized designee.

Exclusion from Participation—a sanction that terminates a provider, provider-in-fact or other person from participation in the Louisiana Medicaid program, or one or more of its programs and cancels the provider's provider agreement.

a. A provider who is excluded may, at the end of the period of exclusion, reapply for enrollment.

b. A provider, provider-in-fact or other person who is excluded may not be a provider or provider-in-fact, agent of a provider, or affiliate of a provider or have a direct or indirect ownership in any provider during their period of exclusion.

False or Fraudulent—a claim which the provider or his billing agent submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. "False or fraudulent claim" shall include a claim which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule.

Federal Regulations—the provisions contained in the Code of Federal Regulations (CFR) or the Federal Register (FR).

Finalized Sanction or Final Administrative Adjudication or Order—a final order imposed pursuant to an administrative adjudication that has been signed by the Secretary or the Secretary's authorized designee.

Fiscal Agent or Fiscal Intermediary—an organization or legal entity which whom the department contracts with to provide for the processing, review of or payment of provider bills and claims.

Good, Service or Supply—any good, item, device, supply, or service for which a claim is made, or is attempted to be made, in whole or in part.

Health Care Provider—any person furnishing or claiming to furnish a good, service, or supply under the Medical Assistance Programs as defined in R.S. 46:437.3 and any other person defined as a health care provider by federal or state law or by rule. For the purpose of this regulation health care provider and provider are interchangeable terms.

Identified Overpayment—the amount of overpayment made to or requested by a provider that has been identified in a final administrative adjudication or order.

Ineligible Recipient—an individual who is not eligible to receive health care through the medical assistance programs.

Indirect Ownership—an ownership interest in an entity that has an ownership interest in a provider. This term includes an ownership interest in any entity that has an indirect ownership interest in a provider.

Informal Hearing—an informal conference between the provider, provider-in-fact or other persons and the Director of Program Integrity or the SURS manager related to a notice of corrective action, notice of withholding of payments or notice of sanction.

Investigator or Analyst—any person authorized to conduct investigations on behalf of the department, BHSF, Program

Integrity Division, SURS or the fiscal intermediary, either through employment or contract for the purposes of payment or programmatic review.

Investigatory Process—the examination of the provider, provider-in-fact, agent-of-the-provider, or affiliate, and any other person or entity, and any and all records held by or pertaining to them pursuant to a written request from BHSF. No adjudication is made during this process.

Knew or Should Have Known—the person knew or should have known that the activity engaged in or not engaged in was prohibited conduct under this regulation or federal or state laws and regulations. The standard to be used in determining knew or should have known is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

Knowing or Knowingly—the person has actual knowledge of the information, or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information. The standard to be used in determining knowing or knowingly is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

Law—the constitutions, statutory or code provisions of the federal government and the government of the state of Louisiana.

Louisiana Administrative Code (LAC)—the *Louisiana Administrative Code* or the *Louisiana Register*.

Managing Employee—a person who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operations of a provider. Managing employee shall include, but is not limited to, a chief executive officer, president, general manager, business manager, administrator, or director.

Medical Assistance Program or Medicaid—the Medical Assistance Program (Title XIX of the Social Security Act), commonly referred to as "Medicaid", and other programs operated by and funded in the department which provide payment to providers.

Misrepresentation—the knowing failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required on a claim or a provider agreement or the making of a false or misleading statement to the department relative to the Medical Assistance Program.

Notice—actual or constructive notice.

Notice of an Action—a written notification of an action taken or to be taken by the department, BHSF or SURS. A notice must be signed by or on behalf of the Secretary, Director of BHSF, or Director of Program Integrity.

Medical Necessity or Necessary Goods, Services or Supplies—goods, services or supplies that a prudent provider would provide to a recipient for the purpose of preventing, diagnosing or treating an illness, injury, disease, handicap, infirmity, deformity or malfunction or its symptoms in a manner that is:

(a) in accordance with generally accepted standards of medical practice or other applicable practice or profession; and

(b) is appropriate in terms of type, frequency, extent, site, duration and cost.

Ownership Interest—the possession, directly or indirectly, of equity in the capital or the stock, or right to share in the profits of a provider.

Payment or Reimbursement—the payment or reimbursement to a provider from Medical Assistance Programs' funds pursuant to a claim, or the attempt to seek payment for a claim.

Person—any natural person, company, corporation, partnership, firm, association, group, or other legal entity or as otherwise provided for by law.

Policies, Criteria or Procedure—those things established or provided for through departmental manuals, provider updates, remittance advice or bulletins issued by the Medical Assistance Program or on behalf of the Medical Assistance Program.

Program—any program authorized under the Medical Assistance Program.

Program Integrity Division (PID)—the Program Integrity Unit under BHSF within the department, its predecessor and successor.

Provider Agreement—the document(s) signed by or on behalf of the provider and those things established or provided for in R.S. 46:437.11 - 437.14 or by rule, which enrolls the provider in the Medical Assistance Program or one or more of its programs and grants to the provider a provider number and the privilege to participate in Medicaid of Louisiana or one or more of its programs.

Provider Enrollment—the process through which a person becomes enrolled in the Medical Assistance Program or one of its programs for the purpose of providing goods, services, or supplies to one or more Medicaid recipients or submissions of claims.

Provider-in-Fact—person who directly or indirectly participates in management decisions, has an ownership interest in the provider, or other persons defined as a provider-in-fact by federal or state law or by rule. A person is presumed to be a provider-in-fact if the person is:

- a. a partner;
- b. a board of Directors member;
- c. an office holder; or

d. a person who performs a significant management or administrative function for the provider, including any person or entity who has a contract with the provider to perform one or more significant management or administrative functions on behalf of the provider;

e. a person who signs the provider enrollment paper work on behalf of the provider;

f. a managing employee;

g. an agent of the provider, or a billing agent may also be a provider-in-fact for the purpose of determining a violation and the imposing of a sanction under this regulation.

Provider Number—a provider's billing or claim reimbursement number issued by the department through BHSF under the Medical Assistance Program.

Random Statistical Sample—a statistical formula and sampling technique used to produce a statistical extrapolation of the amount of overpayment made to a provider or a volume of the violations.

Recoupment—recovery through the reduction, in whole or in part, of payments or reimbursements to a provider.

Recovery—the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorney's fees, or interest or settlement amounts.

Referring Provider—any provider, provider-in-fact or anyone operating on behalf of the provider who refers a recipient to another person for the purpose of providing goods, services, or supplies.

Recipient—an individual who is eligible to receive health care through the medical assistance programs.

Rule or Regulation—any rule or regulation promulgated by the department in accordance with the Administrative Procedure Act and any federal rule or regulation promulgated by the federal government in accordance with federal law.

Secretary—the secretary of the Department of Health and Hospitals, or his authorized designee.

SURS Manager—the individual designated by the Secretary as the manager of SURS or authorized designee.

Surveillance and Utilization Review Section (SURS)—the section within BHSF assigned to identify providers for review, conduct payment reviews, and sanction providers resulting from payments to and claims from providers, and any other functions or duties assigned by the Secretary.

Suspension from Participation—occurs between the issuing of the notice of the results of the informal hearing and the issuing of the final administrative adjudication or order.

Terms of the Provider Agreement—the terms contained in the provider agreement or related documents and established or provided for in R.S. 46:437.11 - 437.14 or established by law or rule.

Undersecretary—the Undersecretary of the department or authorized designee.

Violations—any practice or activity by a provider, provider-in-fact, agent-of-the-provider, affiliate, or other persons which is prohibited by law or this rule.

Withhold Payment—to reduce or adjust the amount, in whole or in part, to be paid to a provider for pending or future claims during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the provider.

Working Days—Monday through Friday, except for legal holidays and other situations when the department is closed.

B. General Terms. Definitions contained in applicable federal laws and regulations shall also apply to this and all department regulations. In the case of a conflict between federal definitions and departmental definitions, the department's definition shall apply unless the federal definition, as a matter of law, supersedes a departmental definition. Definitions contained in applicable state laws shall also apply to this and all departmental definitions. In the case of a conflict between a state statutory definition and a departmental definition, the departmental definition shall apply unless the state statutory definition, as a matter of state law, supersedes the departmental definition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4105. Material

A. The Secretary of the Department of Health and Hospitals establishes the following definitions of Material:

1. For the purpose of the R.S. 48:438.3 as required under R.S. 48:438.8D, in determining whether a pattern of incorrect submissions exists in regards to an alleged false or fraudulent claim the incorrect submissions must be five (5) percent or more of the total claims submitted or to be submitted by the provider during the period covered in the civil action filed or to be filed. The total amount of claims for the purpose of this provision is the total number of claims submitted or to be submitted by the provider during the period of time and type or kind of claim which is the subject of the civil action under R.S. 48:438.3.

2. For the purpose of this regulation, in determining whether a pattern of incorrect submissions exist in regards to an alleged fraudulent or willful violation the incorrect submissions must be five (5) percent or more of the total claims being subjected to claims review under the provisions of this regulation. The total amount of claims for the purpose of this provision is the total number of claims submitted or to be submitted by the provider during the period of time and type or kind of claim which is the subject of claims review.

3. Statistically valid sampling techniques may be used by either party to prove or disprove whether the pattern was material.

B. This provision is enacted under the authority provided in R.S. 46:438.8D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4107. Random Statistical Sampling

A. Statistical Sampling techniques may be used by any party to the proceedings.

B. A statistically valid sampling technique may be used to produce a statistical extrapolation of the amount of overpayment made to a provider or the volume or number of violations committed by a provider or to disprove same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter B. Claims Review: Prepayment or Post-payment Review

§4109. Departmental and Provider Obligations

A. The department, through the Secretary, has an obligation, imposed by federal and state laws and regulations, to:

1. review bills and claims submitted by providers before payment is made and after;

a. Payments made by the Louisiana Medicaid Program are subject to review by the Department of Health and Hospitals, Bureau of Health Services Financing, Program Integrity Division or the fiscal intermediary at anytime to ensure the quality, quantity, and need for goods, services, or

supplies provided to or for a recipient by a provider, and to protect the fiscal and programmatic integrity of the Louisiana Medicaid Program and its programs.

b. It is the function of the Program Integrity Division (PID) and the Surveillance and Utilization Review Section (SURS) to provide for and administer the utilization review process within the department.

2. assure that claims review brought under this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment;

3. recognize that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation the department has an obligation to demonstrate that the pattern of incorrect submissions are material as defined under this regulation prior to imposing a fine or other monetary sanction which is greater than the amount of the identified or projected overpayment resulting from the pattern of incorrect submissions;

4. recognize the need to obtain advice from applicable professions and individuals concerning the standards to be applied under this regulation. At the discretion of the Secretary he may seek advice from peer review groups which the Secretary has established for the purpose of seeking such advice;

5. recognize the right of each individual to exercise all rights and privileges afforded to that individual under the law including but not limited the right to counsel as provided under the applicable laws.

B. Providers have no right to receive payment for bills or claims submitted to BHSF or its fiscal intermediary. Providers only have a right to receive payment for valid claims. Payment of a bill or claim does not constitute acceptance by the department or its fiscal intermediary that the bill or claim is a valid claim. The provider is responsible for maintaining all records necessary to demonstrate that a bill or claim is in fact a valid claim. It is the provider's obligation to demonstrate that the bill or claim submitted was for goods, services, or supplies:

1. provided to a recipient who was entitled to receive the goods, services, or supplies;

2. were medically necessary or otherwise properly authorized;

3. were provided by or authorized by an individual with the necessary qualifications to make that determination; and

4. were actually provided to the appropriate recipient in the appropriate quality and quantity by an individual qualified to provide the good, service or supply; or

5. in the case of a claim based on a cost report, that each entry is complete, accurate and supported by the necessary documentation.

C. The provider must maintain and make available for inspection all documents required to demonstrate that a bill or claim is a valid claim. Failure on the part of the provider to adequately document means that the goods, services, or supplies will not be paid for or reimbursed by the Louisiana Medicaid program.

D. A person has no property interest in any payments or reimbursements from Medicaid which are determined to be an overpayment or are subject to payment review.

E. Providers, providers-in-fact and others, including beneficiaries must recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures. In the case of an action brought for a pattern of incorrect submissions, providers and providers in fact recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions the department may impose judicial interest on any outstanding recovery or recoupment, or reasonable cost and expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

F. In determining the amount to be paid or reimbursed to a provider any and all overpayments, recoupment or recovery must be taken into consideration prior to determining the actual amount owed to the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4111. Claims Review

BHSF establishes the following procedures for review of bills and claims submitted to it or its fiscal intermediary:

A. Prepayment Review

1. Upon concurrence of the Director of BHSF and the Director of Program Integrity, bills or claims submitted by a provider may be reviewed by the SURS or the SURS unit of the Fiscal Intermediary for fifteen (15) days from date the payment or reimbursement is ordinarily sent to a provider by BHSF or its fiscal intermediary prior to the issuing of or denial of payment or reimbursement.

2. If, during the prepayment review process, it is determined that the provider may be overpaid, BHSF or its fiscal intermediary must conduct an investigation to determine the reasons for and estimates of the amount of the alleged overpayments.

a. If it is determined that evidence exists which would lead the Director of BHSF and the Director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, or affiliate of the provider has engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

b. If it is determined that evidence exists which would lead the Director of BHSF and the Director of Program Integrity to believe that overpayments may have occurred through reasons other than fraudulent, false or fictitious billing or willful misrepresentation, current and future payments may be withheld.

3. Prepayment review is not a sanction and cannot be appealed nor is it subject to an informal hearing. If prepayment review results in withholding of payments, the provider or provider-in-fact will be notified within five (5) working days of the determination to withhold payments. In the case of an ongoing criminal or outside governmental investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person

unless release of such information is otherwise authorized or required under law. Denials or refusals to pay individual bills that are the result of the edit and audit system are not withholdings of payments.

4. Prepayment review is conducted at the absolute discretion of the Director of BHSF and the Director of Program Integrity.

B. Post-payment Review

1. Providers have a right to receive payment only for those bills that are valid claims. A person has no property interest in any payments or reimbursements from Medicaid, which are determined to be an overpayment or are subject to payment review. After payment to a provider, BHSF or its fiscal intermediary may review any or all payments made to a provider for the purpose of determining if the amounts paid were for valid claims.

2. If, during the post-payment review process, it is determined that the provider may have been overpaid, BHSF or its fiscal intermediary must conduct an investigation to determine the reasons for and estimated amounts of the alleged overpayments.

a. If it is determined that evidence exists that would lead the Director of BHSF and the Director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, or affiliate of the provider may have engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

b. If it is determined that evidence exists that overpayments may have occurred through reasons other than fraud or willful misrepresentation, current and future payments may be withheld.

3. Post-payment review is not a sanction and is not appealable nor subject to an informal hearing. If post-payment review results in withholding of payments, the provider or provider-in-fact will be notified within five working days of the determination to withhold payments. In the case of an ongoing criminal or outside government investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person. Denials or refusals to pay individual bills that are the result of the edit and audit system are not withholdings of payments.

4. Post-payment review is conducted is at the absolute discretion of the Director of BHSF and Director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4113. Claims Review Scope and Extent

A. Prepayment and post-payment review may be limited to specific items or procedures or include all billings or claims by a provider.

B. The length of time a provider is on post-payment review shall be at the sole discretion of the Director of BHSF and the Director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter C. Investigations

§4115. Formal or Informal Investigations

Prepayment and post-payment review may be conducted through either a formal or informal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4117. Informal Investigatory Process

An informal investigation may be initiated without cause and requires no justification. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigation. The provider and provider-in-fact, if they have the ability to do so, shall make all records requested as part of the investigation available for review or copying. The provider and provider-in-fact, if they have the ability to do so, shall make available all agents and affiliates of the provider for the purpose of being interviewed during the course of the informal investigation at the provider's ordinary place of business or any other mutually agreeable location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4119. Formal Investigatory Process

A. The formal investigatory process must be initiated in writing by the Director of BHSF and Director of Program Integrity. The written notice of investigation shall be directed to a provider, specifically naming an investigating officer and be given to the provider, provider-in-fact or their agent. The investigating officer shall provide written notice of the investigation to the provider or a provider-in-fact of the provider at the time of the on-site investigation.

B. The written notice need not contain any reasons or justifications for the investigation, only that such an investigation has been authorized and the individual in charge of the investigation.

C. The investigating officer and the agents of the investigating officer shall have the authority to review and copy records of the provider including, but not limited to, any financial or other business records of the provider or any or all records related to the recipients, and take statements from the provider, provider-in-fact, agents of the provider and any affiliates of the provider, as well as any recipients who have received goods, services, or supplies from the provider or whom the provider has claimed to have provided goods, services, or supplies.

D. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigating

officer and agents of the investigating officer, including full and truthful disclosure of all information requested and questions asked. The provider and provider-in-fact, if they have the ability to do so, shall make all records requested by the investigating officer available for review and copying. The provider and provider-in-fact, if they have the ability to do so, shall make available all agents and affiliates of the provider for the purpose of being interviewed by the investigating officer or agent of the investigating officer at the provider's ordinary place of business or any other mutually agreeable location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4121. Investigatory Discussion

A. During the investigatory process the provider, provider-in-fact, agent of the provider, or affiliate of the provider shall be notified in writing of the time and place of an investigatory discussion. The notice shall contain the names of the individuals who are requested to be present at the discussion and any documents that the provider, provider-in-fact, agent of the provider or affiliate of the provider must bring to the discussion.

B. The provider and provider-in-fact, if they have the ability to do so, shall be responsible for assuring the attendance of individuals who are currently employed by, contracted by, or affiliated with the provider.

C. This notice may contain a request to bring records to the investigatory discussion. If such a request for records is made, the provider and provider-in-fact are responsible for having those records produced at the investigatory discussion. The provider or provider-in-fact shall be given at least five working days to comply with the request.

D. At the investigatory discussion, the authorized investigating officer can ask any of the individuals present at the discussion questions related to the provider's billing practices or other aspects directly or indirectly related to the providing of goods, supplies, and services to Medicaid recipients or nonrecipients, or any other aspect related to the provider's participation in the Louisiana Medicaid program. Any provider, provider-in-fact, agent of the provider, affiliate of the provider, or recipient brought to an investigatory discussion has an affirmative duty to fully and truthfully answer any questions asked and provide any and all information requested.

E. Any person present at an Investigatory Discussion may be represented by counsel. The exercising of a constitutional or statutory right during an Investigatory Discussion shall not be construed as a failure to cooperate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4123. Written Investigatory Reports

The investigating officer or analyst, at the discretion of the Director of Program Integrity or the SURS manager, may draft a written investigative report concerning the results of the informal or formal investigation. The Director of BHSF and Director of Program Integrity at their discretion, may release the report to outside law enforcement agencies, authorized federal representatives, the legislative auditor or any individuals within the department whom the Secretary has authorized to review such reports. No other entities or persons shall have a right to review the contents of an investigative report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter D. Conduct

§4125. Introduction

This Subchapter pertains to the kinds of conduct which are violations, the scope of a violation, types of violations and elements of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4127. Prohibited Conduct

Violations are kinds of conduct that are prohibited and constitute a violation under this regulation. No provider, provider-in-fact, agent of the provider, billing agent, affiliate of a provider or other person may engage in any conduct prohibited by this regulation. If they do, the provider or provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person may be subject to corrective action, withholding of payment, recoupment, recovery, suspension, exclusion, posting bond or other security, monetary penalties or any other sanction listed in this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4129. Violations

A. The following is a list of violations.

1. Failure to comply with any or all federal or state laws applicable to the Medical Assistance Program or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, affiliate or other person is participating is a violation of this provision.

a. Neither the Secretary, Director of BHSF, or any other person can waive or alter a requirement or condition established by statute.

b. Requirements or conditions imposed by a statute can only be waived, modified or changed through legislation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable laws.

d. Providers, providers-in-fact, agents of providers, billing agents, and affiliates of providers are presumed to know the law. Ignorance of the applicable laws is not a defense to any administrative action.

2. Failure to comply with any or all federal or state regulations or rule applicable to the Medical Assistance Program or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider is participating is a violation of this provision.

a. Neither the Secretary, Director BHSF or any other person can waive or alter a requirement or condition established by regulation.

b. Requirements or conditions imposed by a regulation can only be waived, modified, or changed through formal promulgation of a new or amended regulation, unless authority to do so is specifically provided for in the regulation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable regulations.

d. Providers, providers-in-fact, agents of providers, and affiliates of the provider are presumed to know the regulations and rules applicable to participation in the Medical Assistance Program or one or more of its programs in which they are participating. Ignorance of the applicable regulations is not a defense to any administrative action.

3. Failure to comply with any or all policies, criteria or procedures of the Medical Assistance Program or the applicable program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider is participating is a violation of this provision.

a. Policies, criteria and procedures are contained in program manuals, training manuals, remittance advice, provider updates or bulletins issued by or on behalf of the Secretary or Director of BHSF.

b. Policies, criteria and procedures can be waived, amended, clarified, repealed or otherwise changed, either generally or in specific cases, only by the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF.

c. Such waivers, amendments, clarifications, repeals, or other changes must be in writing and state that it is a waiver, amendment, clarification, or change in order to be effective.

d. Notice of the policies, criteria and procedures of the Medical Assistance Program and its programs are provided to providers upon enrollment and receipt of a provider number. It is the duty of the provider at the time of enrollment or re-enrollment to obtain the policies, criteria, and procedures, which are in effect at the time of enrollment or re-enrollment.

e. Waivers, amendments, clarifications, repeals, or other changes to the policies, criteria, or procedures must be in writing and are generally contained in a new or reissued program manual, new manual pages, remittance advice, provider updates, or specifically designated bulletins from the Secretary, Undersecretary, Deputy Secretary or Director of BHSF.

f. Waivers, amendments, clarifications, repeals or other changes are mailed to the provider at the address given to BHSF or the fiscal intermediary by the provider for the express purpose of receiving such notifications.

i. It is the duty of the provider to provide the above address and make arrangements to receive these mailings through that address. This includes the duty to inform BHSF or the fiscal intermediary of any changes in the above address prior to actual change of address.

ii. Mailing of a manual, new manual pages, provider update, bulletins, or remittance advice to the provider's latest listed address creates a rebuttable presumption that the provider received it. The burden of proving lack of notice of policy, criteria, or procedure or waivers, amendments, clarifications, repeals, or other changes in same is on the party asserting it.

iii. Providers and providers-in-fact are presumed to know the applicable policies, criteria and procedures and any or all waivers, amendments, clarifications, repeals, or other changes to the applicable rules, policies, criteria and procedures which have been mailed to the address provided by the provider for the purpose of receiving notice of same.

iv. Ignorance of an applicable policy, criteria, or procedure or any and all waivers, amendments, clarifications, repeals, or other changes to applicable policies, criteria and procedures is not a defense to an administrative action brought against a provider or provider-in-fact. Lack of notice of a policy, criteria, or procedure or waiver, amendment, clarification, repeal, or other change of the same is a defense to a violation based on abusive, fraudulent, false, or fictitious billing practice or willful practices or the imposition of any sanction except issuing a warning, education and training, prior authorization, posting bond or other security, recovery of overpayment or recoupment of overpayment. Lack of notice of a policy, criteria, or procedure or waivers, amendments, clarifications, repeals, or other changes to applicable policies, criteria, or procedures is not a defense to a violation, which is aberrant.

g. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable policies, criteria, and procedures and any waivers, amendments, clarifications, repeals, or other changes in applicable policies, criteria, or procedures.

4. Failure to comply with one or more of the terms or conditions contained in the provider's provider agreement or any and all forms signed by or on behalf of the provider setting forth the terms and conditions applicable to participation in the Medical Assistance Program or one or more of its programs is a violation of this provision.

a. The terms or conditions of a provider agreement or those contained in the signed forms, unless specifically provided for by law or regulation or rule, can only be waived, changed or amended through mutual written agreement between the provider and the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF. Those conditions or terms that are established by law or regulation or rule may not be waived, altered, amended, or otherwise changed except through legislation or rule making.

b. A waiver, change, or amendment to a term or condition of a provider agreement and any signed forms must be reduced to writing and be signed by the provider and the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF in order to be effective.

c. Such mutual agreements cannot waive, change or amend the law, regulations, rules, policies, criteria or procedures.

d. The provider and provider-in-fact are presumed to know the terms and conditions in their provider agreement and any signed forms related thereto and any changes to their provider agreement or the signed forms related thereto.

e. The provider and provider-in-fact are required and have an affirmative duty to fully inform all their agents or affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the terms and conditions contained in the provider agreement and the signed forms related thereto and any change made to them. Ignorance of the terms and conditions in the provider agreement or signed forms or any changes to them is not a defense.

Note: The Department, BHSF or the fiscal intermediary may, from time to time, provide training sessions and consultation on the law, regulations, rules, policies, criteria, and procedures applicable to the Medical Assistance Program and its programs. These training sessions and consultations are intended to assist the provider, provider-in-fact, agents of providers, billing agents, and affiliates. Information presented during these training sessions and consultations do not necessarily constitute the official stands of the department and BHSF in regard to the law, regulations and rules, policies, or procedures unless reduced to writing in compliance with this Subpart.

5. Making a false, fictitious, untrue, misleading statement or concealment of information during the application process or not fully disclosing all information required or requested on the application forms for the Medicaid Assistance Program, provider number, enrollment paperwork, or any other forms required by the department, BHSF or its fiscal intermediary that is related to enrollment in the Medical Assistance Program or one of its programs or failing to disclose any other information which is required under this regulation, or other departmental regulations, rules, policies, criteria, or procedures is a violation of this provision. This includes the information required under R.S. 46:437.11 - 437.14. Failure to pay any fees or post security related to enrollment is also a violation of this Section.

a. The provider and provider-in-fact have an affirmative duty to inform BHSF in writing through provider enrollment of any and all changes in ownership, control, or managing employee of a provider and fully and completely disclose any and all administrative sanctions, withholding of payments, criminal charges, or convictions, guilty pleas, or no contest pleas, civil judgments, civil fines, or penalties imposed

on the provider, provider-in-fact, agent of the provider, billing agent, or affiliates of the provider which are related to Medicare or Medicaid in this or any other state or territory of the United States.

i. Failure to do so within ten (10) working days of when the provider or provider-in-fact knew or should have known of such a change or information is a violation of this provision.

ii. If it is determined that a failure to disclose was willful or fraudulent, the provider's enrollment can be voided back to the date of the willful misrepresentation or concealment or fraudulent disclosure.

6. Not being properly licensed, certified, or otherwise qualified to provide for the particular goods, services, or supplies provided or billed for or such license, certificate, or other qualification required or necessary in order to provide a good, service, or supply has not been renewed or has been revoked, suspended or otherwise terminated is a violation of this provision. This includes, but is not limited to, professional licenses, business licenses, paraprofessional certificates, and licenses or other similar licenses or certificates required by federal, state, or local governmental agencies, as well as, professional or paraprofessional organizations or governing bodies which are required by the Medical Assistance Program. Failure to pay required fees related to licensure or certification is also a violation of this provision.

7. Having engaged in conduct or performing an act in violation of official sanction which has been applied by a licensing authority, professional peer group, or peer review board or organization, or continuing such conduct following notification by the licensing or reviewing body that said conduct should cease is a violation of this provision.

8. Having been excluded or suspended from participation in Medicare is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded or suspended from Medicare during the period of exclusion or suspension.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with or affiliate with any person or entity who has been excluded or suspended from Medicare; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been excluded or suspended from Medicare.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents, or affiliates is a violation of Paragraph 5 of this Subsection.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

9. Having been excluded, suspended, or otherwise terminated from participation in Medicaid or other publicly funded health care or insurance programs of this state or any other state or territory of the United States is a violation of this provision. It is also a violation of this Section for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded, suspended or otherwise terminated from participation in Medicaid or other publicly funded health care or health insurance programs of this state or another state or territory of the United States. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded from Medicaid or other publicly funded health care or health insurance programs of this state or any other state or territory of the United States during the period of exclusion or suspension.

a. The provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provisions by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

10. Having been convicted of, pled guilty, or pled no contest to a crime, including attempts or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies or billing for goods, services, or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds is a violation of this provision. It is also a violation for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to a crime, including attempts to or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies or billing for goods, services, or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilt pled, or no contest plea to the above felony criminal conduct on the part of the provider, provider-in-fact, their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above felony criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above felony criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

11. Having been convicted of, pled guilty to, or pled no contest to Medicaid Fraud in a Louisiana court or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Medical Assistance Program is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to Medicaid Fraud in a Louisiana court or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Louisiana Medicaid program.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, plead guilty to, or plead no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

12. Having been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an

activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care.

a. The provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, or their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment or contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

13. Having been convicted of, pled guilty, or pled no contest to Medicaid, Medicare or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, plead guilty, or plead no contest to Medicaid, Medicare, or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud, or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States.

a. The provider and provider-in-fact after they knew or should have know of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, or their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct that has been pardoned does not violate this provision.

14. Having been convicted of, pled guilty to, or pled no contest to in any federal court, state court, or court in any territory of the United States to any of the following criminal conduct, attempt to commit or conspiracy to commit any of the following crimes are violations of this provision:

a. bribery or extortion;

b. sale, distribution, or importation of a substance or item that is prohibited by law;

c. tax evasion or fraud;

d. money laundering;

e. securities or exchange fraud;

f. wire or mail fraud;

g. violence against a person;

h. act against the aged, juveniles or infirmed;

i. any crime involving public funds; or

j. other similar felony criminal conduct.

i. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

(a). inform BHSF in writing of any such criminal charges, convictions, or pleas on the part of the provider, provider-in-fact, their agents, or their affiliates;

(b). not hire, contract with, or affiliate with any person or entity who has engaged in any such criminal misconduct; and

(c). terminate any and all ownership, employment and contractual relationships with any person or entity that has engaged in any such criminal misconduct.

ii. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or their affiliates is a violation of Paragraph 5 of this Subsection.

iii. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) -year period, this provision is not violated. Criminal conduct that has been pardoned does not violate this provision.

15. Being found in violation of or entering into a settlement agreement under this state's Medical Assistance Program Integrity Law, the Federal False Claims Act, Federal Civil Monetary Penalties Act, or any other similar civil statutes in this state, in any other state, United States or United States territory is a violation of this provision.

a. Relating to violations of this provision, the provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any violations of this provision on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with or affiliate with any person or entity who has violated this provision; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has violated this provision.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or their affiliates is a violation of Paragraph 5 of this Subsection.

c. If a False Claims Act action or other similar civil action is brought by a Qui-Tam plaintiff or under a little attorney general or other similar provision, no violation of this provision has occurred until the defendant has been found liable in the action.

d. If three (3) years have passed from the time a person is found liable or entered a settlement agreement under the False Claims Act or other similar civil statute and the conditions of the judgement or settlement have been satisfactorily fulfilled, no violation has occurred under this provision.

16. Failure to correct the deficiencies or problem areas listed in a notice of corrective action or failure to meet the provisions of a corrective action plan or failure to correct deficiencies in delivery of goods, services, or supplies or deficiencies in billing practices or record keeping after receiving written notice to do so from the Secretary, Director of BHSF or Director of Program Integrity is a violation of this provision.

17. Having presented, causing to be presented, attempting to present, or conspiring to present false, fraudulent, fictitious, or misleading claims or billings for payment or reimbursement to the Medical Assistance Program through BHSF or its authorized fiscal intermediary for goods, services, or supplies, or in documents related to a cost report or other similar submission is a violation of this provision.

18. Engaging in the practice of charging or accepting payments, in whole or in part, from one or more recipients for goods, services, or supplies for which the provider has made or will make a claim for payment to the Louisiana Medicaid program is a violation of this provision, unless this prohibition

has been specifically excluded within the program under which the claim was submitted or will be made or the payment by the recipient is an authorized copayment or is otherwise specifically authorized by law or regulation. Having engaged in practices prohibited by R.S. 46:438.2 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

19. Having rebated or accepted a fee or a portion of a fee or anything of value for a Medicaid recipient referral is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute or regulation, rule, policy, criteria or procedure of the department through BHSF. Having engaged in practices prohibited by R.S. 46:438.2 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

20. Paying to another a fee in cash or kind for the purpose of obtaining recipient lists or recipients names is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute or regulation, rule, policy, criteria or procedure of the department through BHSF. Using or possessing any recipient list or information, which was obtained through unauthorized means, or using such in an unauthorized manner is also a violation of this provision. Having engaged in practices prohibited by R.S. 46:438.2 or R.S. 46:438.4 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

21. Failure to repay or make arrangements to repay an identified overpayment or otherwise erroneous payment within ten (10) working days after the provider or provider-in-fact receives written notice of same is a violation of this provision. Failure to pay any and all administrative or court ordered restitution, civil money damages, criminal or civil fines, monetary penalties or costs or expenses is also a violation of this provision. Failure to pay any assessed provider fee or payment is also a violation of this provision.

22. Failure to keep or make available for inspection, audit, or copying records related to the Louisiana Medicaid program or one or more of its programs for which the provider has been enrolled or issued a provider number or has failed to allow BHSF or its fiscal intermediary or any other duly authorized governmental entity an opportunity to inspect, audit, or copy those records is a violation of this provision. Failure to keep records required by Medicaid or one of its programs until payment review has been conducted is also a violation of this provision;

23. Failure to furnish or arrange to furnish information or documents to BHSF within five (5) working days after receiving a written request to provide that information to BHSF or its fiscal intermediary is a violation of this provision.

24. Failure to cooperate with BHSF, its fiscal intermediary or the investigating officer during the post-payment or prepayment process, investigative process, an investigatory discussion, informal hearing or the administrative appeal process or any other legal process or making, or caused to be made, a false or misleading statement of a material fact in connection with the post-payment or prepayment process, corrective action, investigation process, investigatory

discussion, informal hearing or the administrative appeals process or any other legal process is a violation of this provision. The exercising of a constitutional or statutory right is not a failure to cooperate. Requests to for scheduling changes or asking questions are not grounds for failure to cooperate.

25. Making, or causing to be made, a false, fictitious or misleading statement or making, or caused to be made, a false, fictitious or misleading statement of a fact in connection with the administration of the Medical Assistance Program which the person knew or should have known was false, fictitious or misleading is a violation of this provision. This includes, but is not limited to, the following:

- a. claiming costs for noncovered or nonchargeable services, supplies, or goods disguised as covered items;
- b. billing for services, supplies, or goods which are not rendered to person(s) who are eligible to receive the services, supplies, or goods;
- c. misrepresenting dates and descriptions and the identity of the person(s) who rendered the services, supplies, or goods;
- d. duplicate billing that are abusive, willful or fraudulent;
- e. upcoding of services, supplies, or goods provided;
- f. misrepresenting a recipients need or eligibility to receive services, goods, or supplies or the recipients eligibility for a program;
- g. improperly unbundling goods, services, or supplies for billing purposes;
- h. misrepresenting the quality or quantity of services, goods, or supplies;
- i. submitting claims for payment for goods, services, and supplies provided to nonrecipients if the provider knew or should have known that the individual was not eligible to receive the good, supply, or service at the time the good, service, or supply was provided or billed for.
- j. Furnishing or causing to be furnished goods, services, or supplies to a recipient which;
 - i. are in excess of the recipient's needs;
 - ii. were or could be harmful to the recipient;
 - iii. serve no real medical purpose;
 - iv. are of grossly inadequate or inferior quality;
 - v. were furnished by an individual who was not qualified under the applicable Louisiana Medicaid program to provide the good, service, or supply;
 - vi. the good, service, or supply was not furnished under the required programmatic authorization; or
 - vii. the goods, services or supplies provided were not provided in compliance with the appropriate licensing or certification board's regulations, rules, policies or procedures governing the conduct of the person who provided the goods, services or supplies.
- k. providing goods, services, or supplies in a manner or form that is not within the normal scope and range of the standards used within the applicable profession.
 - l. billing for goods, services, or supplies in a manner inconsistent with the standards established in relevant billing codes or practices.

26. In the case of a managed care provider or provider operating under a voucher, notwithstanding any contractual agreements to the contrary, failure to provide all medically necessary goods, services, or supplies of which the recipient is in need of and entitled to is a violation of this provision.

27. Submitting bills or claims for payment or reimbursement to the Louisiana Medicaid program through BHSF or its fiscal intermediary on behalf of a person or entity which is serving out a period of suspension or exclusion from participation in the Medical Assistance Program or one of its programs, Medicare, Medicaid, publicly funded health care or publicly funded health insurance program in any other state or territory of the United States or the United States is a violation of this provision except for bona fide emergency services provided during a bona fide medical emergency.

28. Engaging in a systematic billing practice which is abusive or fraudulent and which maximizes the costs to the Louisiana Medicaid program after written notice to cease such billing practice(s) is a violation of this provision.

29. Failure to meet the terms of an agreement to repay or settlement agreement entered into under this state's Medical Assistance Program Integrity Law or this regulation is a violation of this provision.

30. If the provider, a person with management responsibility for a provider, an officer or person owning, either directly or indirectly, any shares of stock or other evidence of ownership in a corporate provider, an owner of a sole proprietorship which is a provider, or a partner in a partnership which is a provider, is found to fall into one or more of the following categories:

a. the provider was previously terminated from participation in the Louisiana Medicaid program or one or more of its programs; and

i. was a person with management responsibility for a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or

ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or

iii. was an owner of a sole proprietorship or a partner of a partnership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs.

b. the provider has been found to have engaged in practices prohibited by federal or state law or regulation; and

i. was a person with management responsibility for a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices prohibited by federal or state law or regulation.

c. the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

i. was a person with management responsibility for a provider during the time the provider engaged in practices for which the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

ii. was an officer or person owning, directly or indirectly, any of the shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4131. Scope of a Violation

A. Violations may be imputed in the following manner.

1. The conduct of a provider-in-fact is always attributable to the provider. The conduct of a managing employee is always attributable to the provider and provider-in-fact.

2. The conduct of an agent of the provider, billing agent, or affiliate of the provider may be imputed to the provider or provider-in-fact if the conduct was performed within the course of his duties for the provider or was effectuated by him with the knowledge or approval of the provider or provider-in-fact.

3. The conduct of any person or entity operating on behalf of a provider may be imputed to the provider or provider-in-fact.

4. The provider and provider-in-fact are responsible for the conduct of any and all officers, employees or agents of the provider including any with whom the provider has a contract to provide managerial or administrative functions for the provider or to provide goods, services, or supplies on behalf of the provider. The conduct of these persons or entities may be imputed to the provider or provider-in-fact.

5. A violation under one Medicaid number may be extended to any and all Medicaid Numbers held by the provider or provider-in-fact or which may be obtained by the provider or provider-in-fact.

6. Recoupments or recoveries may be made from any payments or reimbursement made under any and all provider numbers held by or obtained by the provider or provider-in-fact.

7. Any sanctions, including recovery or recoupment, imposed on a provider or provider-in-fact shall remain in effect until its terms have been satisfied. Any person or entity who purchases, merges or otherwise consolidates with a provider or employs or affiliates a provider-in-fact, agent of the provider or affiliate of a provider who has had sanctions imposed on it under this regulation assumes liability for those sanctions, if the person or entity knew or should have known about the existence of the sanctions, and may be subject to additional sanctions based on the purchase, merger, consolidation, affiliation or employment of the sanctioned provider or provider-in-fact.

8. A provider or provider-in-fact who refers a recipient to another for the purpose of providing a good, service, or supply to a recipient may be held responsible for any or all over-billing by the person to whom the recipient was referred provided the referring provider or person knew or should have known that such over-billing was likely to occur.

9. Providers which are legal entities, i.e. clinics, corporations, HMO's, PPO's, etc., may be held jointly liable for the repayment or recoupment of any person within that legal entity if it can be shown that the entity received any economic benefit related to the overpayment.

10. Withholdings of payments imposed on a provider may be extended to any or all provider numbers held or obtained by that provider or any provider-in-fact of that provider.

B. Attributing, imputing, extension or imposing under this provision shall be done on a case-by-case basis with written reasons for same. The written reasons must demonstrate that the imputing was based on knowledge of the violation and that the person to which it was imputed received an economic benefit as a result of the violation. The person to whom the violation has been imputed may only be sanctioned up to the amount of the economic benefit received by that individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4133. Types of Violation

A. Violations can be of four different types: aberrant; abusive; willful; or fraudulent. This Subsection defines these four different types of violations.

1. *Aberrant Practice*—any practice that is inconsistent with the laws, regulations, rules, policies, criteria or practices or the terms in the provider agreement or signed forms related to the provider agreement and are applicable to the Louisiana Medicaid program or one or more of its programs in which the provider is enrolled or was enrolled at the time of the alleged occurrence.

2. *Abusive Practice*—any practice of which the provider has been informed in writing by the Secretary, Director of BHSF, or Director of Program is aberrant, and the provider, provider-in-fact, agent of the provider, or an affiliate of the provider continues to engage in that practice after the written notice to discontinue such a practice has been provided to the provider or provider-in-fact.

3. *Willful Practice*—a deception or misrepresentation made by a person who knew, or should have known, that the deception or misrepresentation was false, untrue, misleading, or wrong or an aberrant or abusive practice which is so pervasive as to indicate that the practice was willful. A willful practice also includes conduct that would be in violation of this state's Medical Assistance Program Integrity Law.

4. *Fraudulent Practice*—a deception or misrepresentation made by a person who had knowledge that the deception or misrepresentation was false, untrue or wrong or deliberately failed to take reasonable steps to determine the truthfulness or correctness of information, and the deception or misrepresentation did or could have resulted in payment of one or more claims for which payment should not have been made or payment on one or more claims which would or could be greater than the amount entitled to. This includes any act or attempted act that could constitute fraud under either criminal or civil standards under applicable federal or Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4135. Elements

A. Each type of violation contains different elements, which must be established.

1. An aberrant practice is a technical or inadvertent violation where the person did not knowingly engage in prohibited conduct. A finding of an aberrant practice does not require proof of knowledge, intent, or overpayment or attempted overpayment.

2. An abusive practice occurs where the person has been informed in writing that the person has engaged in an aberrant practice and the person continues to engage in the practice after such notice but the person has not obtained or attempted to obtain an overpayment. A finding of an abusive practice requires notice of the aberrant practice and its continued existence following that notice, but does not require proof of intent or overpayment or attempted overpayment.

3. A willful practice occurs when the person knew or should have known of the prohibited conduct and the person has obtained or attempted to obtain overpayment. A finding of willful practice requires that the person knew or should have known of the deception or misrepresentation, but does not require proof of intent or overpayment or attempted overpayment.

4. A fraudulent practice occurs when the person had actual knowledge of the prohibited conduct and knowingly obtained or attempted to obtain overpayment. A finding of fraudulent practice requires knowledge, intent and overpayment or attempted overpayment.

B. Providers, providers-in-fact, agents of the provider, affiliates of the provider and other persons may be found to have engaged in the same prohibited conduct but committed different types of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter E. Administrative Sanctions, Procedures and Processes

§4137. Sanctions for Prohibited Conduct

A. Any or all of the following sanctions may be imposed for any one or more of the above listed kinds of prohibited conduct, except as provided for in this regulation:

1. issue a warning to a provider or provider-in-fact or other person through written notice or consultation;

2. require that the provider or provider-in-fact, their affiliates, and agents receive education and training in laws, regulations, rules, policies, criteria and procedures, including billing, at the provider's expense;

3. require that the provider or provider-in-fact receive prior authorization for any or all goods, services or supplies under the Louisiana Medicaid program or one or more of its programs;

4. require that some or all of the provider's claims be subject to manual review.

5. require a provider or provider-in-fact to post a bond or other security or increase the bond or other security already posted as a condition of continued enrollment in the Louisiana Medicaid program or one or more of its programs;

6. require that a provider terminate its association with a provider-in-fact, agent of the provider, or affiliate as a condition of continued enrollment in the Louisiana Medicaid program or one or more of its programs;

7. prohibit a provider from associating, employing or contracting with a specific person or entity as a condition of continued participation in the Louisiana Medicaid program or one or more of its programs;

8. prohibit a provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider from performing specified tasks or providing goods, services, or supplies at designated locations or to designated recipients or classes or types of recipients;

9. prohibit a provider, provider-in-fact, or agent from referring recipients to another designated person or purchasing goods, services, or supplies from designated persons;

10. recoupment;

11. recovery;

12. impose judicial interest on any outstanding recovery or recoupment;

13. impose reasonable costs or expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employee or agent;

14. exclusion from the Louisiana Medicaid program or one or more of its programs;

15. suspension from the Louisiana Medicaid program or one or more of its programs pending the resolution of the departments administrative appeals process;

16. impose a bond or other form of security as a condition of continued participation in the Medical Assistance Program;

17. require the forfeiture of a bond or other security;
18. impose an arrangement to repay;
19. impose monetary penalties not to exceed \$10,000 per violation;
20. impose withholding of payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4139. Scope of Sanctions

A. Sanction(s) imposed can be extended to other persons or entities and to other provider numbers held or obtained by the provider in the following manner:

1. sanction(s) imposed on a provider or provider-in-fact may be extended to a provider or provider-in-fact;
2. sanction(s) imposed on an agent of the provider or affiliate of the provider may be imposed on the provider or provider-in-fact if it can be shown that the provider or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner;
3. sanction(s) imposed on a provider or provider-in-fact arising out of goods, services, or supplies to a referred recipient may also be imposed on the referring provider if it can be shown that the provider or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner;
4. sanction(s) imposed under one provider number may be extended to all provider numbers held by or which may be obtained in the future by the sanctioned provider or provider-in-fact, unless and until the terms and conditions of the sanction(s) has been fully satisfied.
5. sanction(s) imposed on a person remains in effect unless and until its terms and conditions are fully satisfied. The terms and conditions of the sanction(s) remain in effect in the event of the sale or transfer of ownership of the sanctioned provider;

a. the entity or person who obtains ownership interest in a sanctioned provider assumes liability and responsibility for the sanctions imposed on the purchased provider including, but not limited to, all recoupments or recovery of funds or arrangements to repay that the entity or person knew or should have known about;

b. an entity or person who employs or otherwise affiliates itself with a provider-in-fact who has been sanctioned assumes the liability and responsibility for the sanctions imposed on the provider-in-fact that the entity or person knew or should have known about;

c. any entity or person who purchases an interest in, merges with or otherwise consolidates with a provider which has been sanctioned assumes the liability and responsibility for the sanction(s) imposed on the provider that the entity or person knew or should have known about.

B. Exclusion from participation in the Louisiana Medicaid program precludes any such person from submitting claims for payment, either personally or through claims submitted by any other person or entity, for any goods, services, or supplies provided by an excluded person or entity, except bona fide

emergency services provided during a bona fide medical emergency. Any payments made to a person or entity, which are prohibited by this provision, shall be immediately repaid to the Medical Assistance Program through BHSF by the person or entity which received the payments.

C. No provider shall submit claims for payment to the department or its fiscal intermediary for any goods, services, or supplies provided by a person or entity within that provider who has been excluded from the Medical Assistance Program or one or more of its programs for goods, services, or supplies provided by the excluded person or entity under the programs which it has been excluded from except for goods, services, or supplies provided prior to the exclusion and for bona fide emergency services provided during a bona fide medical emergency. Any payments made to a person or entity, which are prohibited by this provision, shall be immediately repaid to the Medical Assistance Program through BHSF by the person or entity which received the payments.

D. When the provisions of §4133 B-C are violated, the person or entity which committed the violations may be sanctioned using any and all of the sanctions provided for in this rule.

E. Extending of sanctions must be done on a case-by-case basis.

F. The provisions in R.S. 46:437.10 shall apply to all sanctions and withholding of payments imposed pursuant to this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4141. Imposition of Sanction(s)

A. The decision as to the sanction(s) to be imposed shall be at the discretion of the Director of BHSF and Director of Program Integrity except as provide for in this provision, unless the sanction is mandatory. In order to impose a sanction the Director of BHSF and the Director of Program Integrity must concur. One or more sanctions may be imposed for a single violation. The imposition of one sanction does not preclude the imposition of another sanction for the same or different violations.

B. At the discretion of the Director of BHSF and the Director of Program Integrity each occurrence of misconduct may be considered a violation or multiple occurrences of misconduct may be considered a single violation or any combination thereof.

C. The following factors may be considered in determining the sanction(s) to be imposed:

1. seriousness of the violation(s);
2. extent of the violation(s);
3. history of prior violation(s);
4. prior imposition of sanction(s);
5. prior provision of education;
6. willingness to obey program rules;
7. whether a lesser sanction will be sufficient to remedy the problem;
8. actions taken or recommended by peer review groups or licensing boards;

9. cooperation related to reviews or investigations by the department or cooperation with other investigatory agencies; and

10. willingness and ability to repay identified overpayments.

D. Notwithstanding §4141.A, sanctions of judicial interest, costs and expenses may only be imposed upon a finding willful or fraudulent practice or upon a finding that the persons' denial of prohibited conduct was frivolous.

E. Notwithstanding §4141.A, a monetary penalty may be imposed only after a finding that the violation involved a willful or fraudulent practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law)

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4143. Mandatory Sanctions

A. Mandatory Exclusion from the Medical Assistance Program. Notwithstanding any other provision to the contrary, Director of BHSF and Director of Program Integrity have no discretion and must exclude the provider, provider-in-fact or other person from the Medical Assistance Program if the violation involves one or more of the following:

1. a conviction, guilty plea, or no contest plea to a criminal offense(s) in federal or Louisiana state court related, either directly or indirectly, to participation in either Medicaid or Medicare;

2. has been excluded from Louisiana Medicaid or Medicare; or

3. has failed to meet the terms and conditions of a Repayment Agreement, settlement or judgment entered into under this state's Medical Assistance Program Integrity Law.

a. In these situations the exclusion from the Medical Assistance Program is automatic and can be longer than, but not shorter in time than, the sentence imposed in criminal court, the exclusion from Medicaid or Medicare or time provided to make payment;

b. The exclusion is retroactive to the time of the conviction, plea, exclusion, the date the repayment agreement was entered by the department or the settlement or judgment was entered under this state's Medical Assistance Program Integrity Law;

c. proof of the conviction, plea, exclusion, failure to meet the terms and conditions of a repayment agreement, or settlement or judgment entered under this state's Medical Assistance Program Integrity Law can be made through certified or true copies of the conviction, plea, exclusion, agreement to repay, settlement, or judgment or via affidavit.

i. if the conviction is overturned, plea set aside, or exclusion or judgment are reversed on appeal, the mandatory exclusion from the Medical Assistance Program shall be removed;

ii. the person or entity that is excluded from the Medical Assistance Program under this Subsection is entitled to an administrative appeal of a mandatory exclusion;

iii. the facts and law surrounding the criminal matter, exclusion, repayment agreement or judgment which serves as the basis for the mandatory exclusion from the Medical

Assistance Program cannot be collaterally attacked at the administrative appeal.

B. Mandatory Arrangements to Pay, Recoupment or Recovery. If the violation(s) was fraudulent or willful and resulted in an identified overpayment, the Secretary, Director of BHSF, and Director of Program Integrity has no discretion. The person or entity must have imposed on them an arrangement to repay, recoupment or recovery of the identified overpayment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4145. Effective Date of a Sanction

All sanctions, except exclusion, are effective upon the issuing of the notice of the results of the informal hearing. The filing of a timely and adequate notice of administrative appeal does not suspend the imposition of a sanction(s), except that of exclusion. In the case of the imposition of exclusion from the Louisiana Medicaid Program or one or more of its programs, the filing of a timely and adequate notice of appeal suspends the exclusion. In the case of an exclusion, the Director of BHSF and Director of Program Integrity may impose a suspension from the Medical Assistance Program or one or more of its programs during the pendency of an administrative appeal. A sanction becomes a final administrative adjudication if no administrative appeal has been filed, and the time for filing an administrative appeal has run. Or in the case of a timely filed notice of administrative appeal, a sanction(s) becomes a final administrative adjudication when the order on appeal has been entered by the Secretary. In order for an appeal to be filed timely it must be sent to the Department's Bureau of Appeals within thirty (30) days from the date on the letter informing the person of the results of that person's informal discussion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter F. Withholding

§4147. Withholding of Payments

A. If, during the course of claims review, the Director of BHSF and the Director of Program Integrity has a reasonable expectation that an overpayment to a provider may have occurred or may occur, that a provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation, or has information that fraudulent, willful or abusive practices may have been used, or that willful misrepresentations may have occurred, the Director of BHSF and the Director of Program Integrity may initiate the withholding of payments to a provider for the purpose of protecting the interest and fiscal integrity of the Louisiana Medicaid program.

B. Basis for Withholding. The Director of BHSF and the Director of Program Integrity may withhold a portion of or all payments or reimbursements to be made to a provider upon

receipt of information that overpayments have been made to a provider, that the provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation (a request for a delay in a hearing shall not constitute a failure to cooperate or delay or obstruction of an investigation), that fraudulent, willful or abusive practices may have occurred or that willful misrepresentation has occurred. If the Director of BHSF and the Director of Program Integrity has been informed in writing by a prosecuting authority that a provider or provider-in-fact has been formally charged or indicted for crimes or is being investigated for potential criminal activities which relate to the Louisiana Medicaid Program or one or more of its programs or Medicare, payments to that provider may be withheld. If the Director of BHSF and the Director of Program Integrity has been informed in writing by any governmental agency or authorized agent of a governmental agency that a provider or a provider-in-fact is being investigated by that governmental agency or its authorized agent for billing practices related to any government funded health care program, payment may be withheld. Withholding of payments may occur without first notifying the provider.

C. Notice of Withholding

1. The provider shall be sent written notice of the withholding of payments within five (5) working days of the actual withholding of the first check that is the subject of the withholding. The notice shall set forth in general terms the reason(s) for the action, but need not disclose any specific information concerning any ongoing investigations nor the source of the allegations. The notice must:

- a. state that payments are being withheld;
- b. state that the withholding is for a temporary period and cite the circumstances under which the withholding will be terminated;
- c. specify to which type of Medicaid claims withholding is effective;
- d. inform the provider of its right to submit written documentation for consideration and to whom to submit that documentation.

2. Failure to provide timely notice of the withholding to the provider or provider-in-fact may be grounds for dismissing or overturning the withholding, except in cases involving written notification from outside governmental authorities, abusive practice, willful practices or fraudulent practices.

D. Duration of Withholding

1. All withholding of payment actions under this Subpart will be temporary and will not continue after:

- a. the Director of BHSF and the Director of Program Integrity has determined that insufficient information exists to warrant the withholding of payments;
- b. recoupment or recovery of overpayments has been imposed on the provider;
- c. the provider or provider-in-fact has posted a bond or other security deemed adequate to cover all past and future projected overpayments by the Director of BHSF and the Director of Program Integrity ;
- d. the notice of the results of the informal hearing.

2. In no case shall withholding remain in effect past the issuance of the notice of the results of the informal hearing,

unless the withholding is based on written notification by an outside agency that an active and ongoing criminal investigation is being conducted or that formal criminal charges have been brought. In that case, the withholding may continue for as long as the criminal investigation is active and ongoing or the criminal charges are still pending, unless adequate bond or other security has been posted with BHSF.

E. Amount of the Withholding

1. If the withholding of payment results from projected overpayments which the Director of BHSF and the Director of Program Integrity determines not to be related to fraudulent, willful or abusive practices, obstruction or delay in investigation or based on written notification from an outside agency, then when determining the amount to be withheld, the ability of the provider to continue operations and the needs of the recipient serviced by the provider shall be taken into consideration by the Director of BHSF and the Director of Program Integrity. In the event that a recipient cannot receive needed goods, services or supplies from another source arrangements shall be made to assure that the recipient can receive goods, supplies, and services. The burden is on the provider to demonstrate that absent that providers ability to provide goods, supplies, or services to that recipient, the recipient could not receive needed good, supplies, or services. Such showing must be made at the Informal Hearing.

2. The amount of the withholding shall be determined by the Director of BHSF and the Director of Program Integrity. The provider should be notified of the amount withheld every 60 days from the date of the issuing of the Notice of Withholding until the withholding is terminated or the Results of the Informal Hearing is issued, which ever comes first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4149. Effect of Withholding on the Status of a Provider or Provider-in-Fact with the Medical Assistance Program

Withholding of payments does not, in and of its self, affect the status of a provider or provider-in-fact. During the period of withholding, the provider may continue to provide goods, services, or supplies and continue to submit claims for them, unless the provider has been suspended or excluded from participation. Any and all amounts withheld or bonds or other security posted may be used for recovery, recoupment or arrangements to pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter H. Arrangements to Repay

§4151. Arrangement to Repay

A. Arrangements to repay may be mutually agreed to or imposed as a sanction on a provider, provider-in-fact or other person. Arrangements to repay identified overpayments,

interest, monetary penalties or costs and expenses should be made through a lump sum single payment within 60 days of reaching or imposing the arrangement to repay. However, an agreement to repay may contain installment terms and conditions. In such cases, the repayment period cannot extend two years from the date the agreement is reached or imposed, except that a longer period may be established by the Secretary or Director of BHSF. In such a case the agreement to repay must be signed by the Secretary or Director of BHSF.

B. All agreements to repay must contain at least:

1. the amount to be repaid;
2. the person(s) responsible for making the repayments;
3. a specific time table for making the repayment;
4. if installment payments are involved, the date upon which each installment payment is to be made; and
5. the security posted to assure that the repayments will be made, and if not made, the method through which the security can be seized and converted by Medicaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR. 23:

Subchapter I. Corrective Actions

§4153. Corrective Actions Plans

A. The following procedures are established for the purpose of attempting to resolve problems prior to the issuing of a notice of sanction or for resolution during the informal hearing or administrative hearing.

1. Corrective Action Plan-Notification

a. The Director of BHSF and the Director of Program Integrity may at anytime issue a notice of corrective action to a provider or provider-in-fact, agent of the provider, or affiliate of the provider. The provider, provider-in-fact, agent of the provider, or affiliate of the provider shall either comply with the corrective action plan within ten (10) working days of receipt of the corrective action plan or request an informal hearing within that time. The purpose of a Corrective Action Plan is to identify potential problem areas and correct them before they become significant discrepancies, deviations or violations. This is an informal process.

i. The request for an informal hearing must be made in writing.

ii. If the provider, provider-in-fact, agent of the provider, or affiliate of the provider opts to comply, it must do so in writing, signed by the provider, provider-in-fact, agent of the provider, or affiliate of the provider.

b. Corrective action plans are also used to resolve matters at or before the informal hearing or administrative appeal process. When so used they serve the same function as a settlement agreement.

2. Corrective Action Plan-Inclusive Criteria. The corrective action plan must be in writing and contain at least the following:

- a. the nature of the discrepancies or violations;
- b. the corrective action(s) that must be taken;
- c. notification of any action required of the provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider;

d. notification of the right to an informal hearing on any or all of the corrective actions which the provider, provider-in-fact, agent of the provider, or affiliate of the provider is not willing to comply with within ten (10) working days of the date of receipt of the notice; and

e. the name, address, telephone and facsimile number of the individual to contact in regards to compliance or requesting an informal hearing.

3. Corrective Action Plans-Restrictions. Corrective actions, which may be included in a corrective action plan, are the following:

a. issuing a warning through written notice or consultation;

b. require that the provider, provider-in-fact, agent of the provider, or affiliate receive education and training in the law, regulations, rules, policies, criteria and procedures related to the Medical Assistance Program, including billing practices or programmatic requirements and practices. Such education or training may be at the provider or provider-in-fact's expense.

c. require that the provider receive prior authorization for any or all goods, services, or supplies to be rendered;

d. place the provider's claims on manual review status before payment is made;

e. restrict or remove the provider's privilege to submit bills or claims electronically;

f. impose any restrictions deemed appropriate by the Director of BHSF and the Director of Program Integrity; or

g. any other items mutually agreed to by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person and the Director of BHSF or the Director of Program Integrity, including, but not limited to, one or more of the sanctions listed in this regulation and an agreement to repay.

4. Only restrictions in §4153 a-f above can be imposed on a provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider without their agreement. Any other items included in a corrective action plan must be mutually agreed to among the parties to the corrective action plan.

5. A corrective action plan is effective ten (10) days after receipt of the Corrective Action Plan by the provider, provider-in-fact, agent of the provider, or affiliate of the provider.

6. No right to an informal hearing or administrative appeal can arise from a corrective action plan, unless the corrective action plan violates the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter J. Informal Hearing Procedures and Processes

§4155. The Informal Hearing

A. A provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person who has received notice of a corrective action(s), notice of sanction or

notice of withholding of payment shall be provided with an Informal Hearing if that person makes a written request for an Informal Hearing within fifteen (15) days of receipt of the corrective action plan or notice. The request for an Informal Hearing must be made in writing and sent in accordance with the instruction in the corrective action plan or notice. The time and place for the informal hearing will be set out in the notice of setting of the informal hearing.

B. The informal hearing is designed to provide the opportunity:

1. to provide the provider, provider-in-fact, agent of the provider, billing agent, the affiliate of the provider or other person an opportunity to informally review the situation;

2. for BHSF to offer alternatives based on information presented by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider, or other person, if any; and

3. for the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person to evaluate the necessity for seeking an administrative appeal. During the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person may be afforded the opportunity to talk with the department's personnel involved in the situation, to review pertinent documents on which the alleged violations are based, to ask questions, to seek clarification, to provide additional information and be represented by counsel or other person. Upon agreement of all parties an informal discussion may be recorded or transcribed.

C. Notice of the Results of the Informal Hearing. Following the informal hearing, BHSF shall inform the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person in writing of the results which could range from canceling, modifying, or upholding the any or all of the violations, sanctions or other actions contained in a corrective action plan, notice of sanction or notice of withholding of payments and the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person's right to an administrative appeal. The notice of the results of the informal hearing must be signed by the Director of BHSF and the Director of Program Integrity.

1. The provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person has the right to request an administrative appeal within thirty (30) days of the mailing of the notice of the results of the informal hearing. At any time prior to the issuance of the written results of the informal hearing, the notice of corrective action or notice of administrative sanction or withholding of payment may be modified.

i. If a finding or reason is dropped from the notice, no additional time will be granted to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person to prepare for the informal hearing.

ii. If additional reasons or sanctions are added to the notice prior to, during or after the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person shall be granted an additional ten (10) working days to prepare responses to the

ew reasons or sanctions, unless the ten (10) day period is waived by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter K. Administrative Appeals

§4157. Administrative Appeal

A. The provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider may seek an administrative appeal from the notice of the results of an informal hearing if the provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider has had one or more appealable sanctions imposed upon him or an appealable issue exist related to a corrective action plan imposed in a notice of the results of the informal hearing.

B. The notice of administrative appeal must be adequate as to form and lodged with the Bureau of Appeals within thirty (30) days of the receipt of the notice of the results of the informal hearing. The lodging of a timely and adequate request for an administrative appeal does not effect the imposition of a corrective action plan or a sanction, unless the sanction imposed is exclusion. All sanctions imposed through the notice of the results of the informal hearing are effective upon mailing or faxing of the notice of the results of the informal hearing to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person, except exclusion from participation in the Medical Assistance Program or one or more of its programs.

C. In the case of an exclusion from participation if the Director of BHSF and the Director of Program Integrity determines that allowing that person to participate in the Medicaid Program during the pendency of the administrative appeal process poses a threat to the programmatic or fiscal integrity of the Medicaid Program or poses a potential threat to health, welfare or safety of any recipients, then that person may be suspended from participation in the Medicaid Program during the pendency of the administrative appeal. If the exclusion is mandatory a threat to Medicaid Program or recipients is presumed. This determination shall be made following the Informal Hearing.

D. Failure to lodge a timely and adequate request for an administrative appeal will result in the imposition of any and all sanctions in the notice of the results of the informal hearing or the corrective action plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4159. Right to Administrative Appeal and Review

A. Only the imposing of one or more sanctions can be appealed to the department's Bureau of Appeals.

1. The adversely effected party has the right to challenge the basis for the violation and the sanction imposed.

2. The adversely effected party must state specifically what the basis for the appeal is and what actions are being challenged on appeal.

B. The following actions are not sanctions, even if listed as such in the notice of sanction or notice of the results of the informal hearing, and are not subject to appeal or review by the department's Bureau of Appeals:

1. referral to a state, federal or professional licensing authority.
2. referral to the Louisiana Attorney General's Medicaid Fraud Control Unit or any other authorized law enforcement or prosecutorial authority.
3. referral to governing boards, peer review groups or similar entities.
4. issuing a warning to a provider or provider-in-fact or other person through written notice or consultation.
5. require that the provider, or provider-in-fact, their affiliates and agents receive education and training in laws, regulations, rules, policies, and procedures, including billing.
6. conducting prepayment or post-payment review.
7. place the provider's claims on manual review status before payment is made.
8. require that the provider or provider-in-fact receive prior authorization for any or all goods, services, or supplies under the Louisiana Medicaid program or one or more of its programs.
9. remove or restrict the provider's use of electronic billing.
10. any restrictions imposed as the result of a corrective action plan.
11. any restrictions agreed to by a provider, provider-in-fact, agent of the provider, or affiliate of the provider.
12. any terms or conditions contained in an arrangement to repay which has been agreed to by a provider, provider-in-fact, agent of the provider, or affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter L. Rewards for Fraud and Abuse Information

§4160. Tip Rewards

A. The Secretary may approve a reward of ten (10) percent of the actual monies recover from a person, with a maximum reward of two thousand (2,000.00) Dollars, to a person who submits information to the Secretary which results in a recovery under this regulation or the provisions of the Medical Assistance Program Integrity Law.

B. The Secretary shall grant rewards only to the extent monies are appropriated for that purpose from the Medical Assistance Programs Fraud Detection Fund. The approval of a reward is solely at the discretion of the Secretary. In making a determination of a reward, the Secretary shall consider the extent to which the tip information contributed to the investigation and recovery of monies. The person providing the information need not have requested a reward in order to be consider for an award by the Secretary.

C. No reward shall be made to any person if:

1. the information was previously known to the department or criminal investigators;

2. a person planned or participated in the action resulting in the investigation.

3. a person who is, or was at the time of the tip, excluded from participation in the Medical Assistance Program or subject to recovery under this regulation or the Medical Assistance Program Integrity Law.

4. a person who is or was a public employee or public official or person who was or is acting on behalf of the state if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by health care providers or Medicaid recipients unless that individual has not been employed or had such duties and obligation for a period of two years prior to providing the information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4, R..S. 46:440.2 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter M. Miscellaneous §4161. Mailing

Mailing refers to the sending of a hard copy via U.S. mail or commercial carrier. Sending via facsimile is also acceptable, so long as a hard copy is mailed. Delivery via hand is also acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4163. Confidentiality

All contents of claim reviews and investigations conducted under this regulation shall remain confidential until a final administrative adjudication is entered. Prior to that, only the parties or their authorized agents and representatives may review the contents of the payment review and investigatory files, unless by law others are specifically authorized to have access to those files. These files may be released to law enforcement agencies, other governmental investigatory agencies, or specific individuals within the department who are authorized by the Director of BHSF and the Director of Program Integrity to have access to such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4165. Severability Clause

If any provision of this regulation is declared invalid or unenforceable for any reason by any court of this state or federal court of proper venue and jurisdiction, that provision shall not affect the validity of the entire regulation or other provisions thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4167. Effect of Promulgation

This regulation, when promulgated, shall supersede any and all other departmental regulations that conflict with the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Interested persons may submit written comments to 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 the proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, 1201 Capitol Access Road, Baton Rouge, Louisiana. At this time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

RULE TITLE: Surveillance and Utilization Review Systems (SURS)

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

This proposed rule will not result in state programmatic costs for SFYs 1999-2000, 2000-2001, and 2001-2002. However, state costs for promulgating this proposed rule as well as the final rule, are \$1,866 and will be incurred in SFY 1999-2000.

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

There will be no federal revenue collections. However, the federal share of printing this proposed rule as well as the final rule is \$1,866.

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

Administrative sanctions will be levied against providers who violate the regulations and rules governing the Medicaid Program. The Tips Program rewards persons who submit information concerning providers of fraud that results in a conviction and subsequent recovery of the over payment. The reward is ten percent (10%) of the money recovered with a maximum of two thousand dollars.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

David W. Hood
Secretary
9904#057

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Targeted Case Management Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule in June of 1997 governing the provision of case management services to targeted populations and certain home and community based services waiver groups (*Louisiana Register*, Vol. 23, Number 6). This rule addressed programmatic requirements including general provisions, standards for provider participation, standards for payment, consumer eligibility and reimbursement methodology.

The Department has subsequently determined it is necessary to restructure targeted case management services under the Medicaid Program in order to enhance the quality of services and assure statewide access to services. Section 4118(I) of the "Omnibus Budget Reconciliation Act of 1987" permits the State to limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or chronic mental illness in order to ensure that the case managers are capable of ensuring that such individuals receive needed services. Therefore, the Department has decided to limit the number of case management agencies that may be enrolled to provide services to recipients in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Program by means of a selective contract. The participation of case management agencies providing service to other targeted and waiver populations will also be limited contingent on the approval of a 1915(b)(4) waiver by the Health Care Financing Administration (HCFA). In addition, all case management agencies shall be required to incorporate personal outcome measures in the development of comprehensive plans of care and to implement procedures for self-evaluation of the agency. An emergency rule was promulgated effective March 1, 1999 establishing the above provisions for case management services (*Louisiana Register*, Volume 25, Number 2.)

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the June 20, 1997 rule and adopts the following rule governing the provision of case management services to targeted population groups and certain home and community based services waiver groups. The number of case management agencies that may be enrolled to provide services to recipients in the Mentally Retarded/ Developmentally Disabled (MR/DD) Waiver Program shall be limited to those agencies who have been awarded a contract by the Department. The participation of case management agencies

roviding service to other targeted and waiver populations will also be limited contingent on the approval of a 1915(b)(4) waiver by the Health Care Financing Administration (HCFA). In addition, all case management agencies shall be required to incorporate personal outcome measures in the development of comprehensive plans of care and to implement procedures for self-evaluation of the agency. All case management agencies must comply with the policies contained in this rule and the Medicaid Case Management Services Provider Manual issued March 1, 1999 and all subsequent changes.

I. General Provisions

A. Case Management Agency Responsibilities. Case Management is defined as services provided to individuals to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services. The Department utilizes a broker model of case management in which recipients are referred to other agencies for the specific services they need. These services are determined by individualized planning with the recipient's family, and other persons/professionals deemed appropriate. Services are provided in accordance with a written comprehensive plan of care which includes measurable person-centered outcomes. All Medicaid enrolled case management agencies are required to perform the following core elements of case management services.

1. Case Management Intake. The purpose of intake is to serve as an entry point for case management services and to gather baseline information to determine the recipient's need, appropriateness, eligibility and desire for case management.

2. Case Management Assessment. Assessment is the process of gathering and integrating formal and informal information regarding a recipient's goals, strengths, and needs to assist in the development of a person centered comprehensive plan of care. The purpose of the assessment is to establish a contract between the case manager and recipient for the provision of service. The assessment shall be performed in the recipient's home.

3. Comprehensive Plan of Care Development. The comprehensive plan of care (CPOC) is a written plan based upon assessment data (which may be multidisciplinary), observations and other sources of information which reflect the recipient's needs, capacities and priorities. The purpose of the CPOC is to identify the services required and the resources available to meet these needs.

a. The CPOC must be developed through a collaborative process involving the recipient, family, case manager, other support systems, appropriate professionals and service providers. It shall be developed in the presence of the recipient; therefore, it cannot be completed prior to a meeting with the recipient. The recipient, family, case manager, support system and appropriate professional personnel must be directly involved and agree to assume specific functions and responsibilities.

b. The CPOC must be completed and submitted for approval within 35 calendar days of the referral for case management services.

4. Case Management Linkage. Linkage is the arranging of services agreed upon with the recipient and identified in the

POC. Upon the request of the recipient or responsible party, attempts must be made to meet service needs with informal resources as much as possible.

5. Case Management Follow-Up/Monitoring. Follow-up/monitoring is the mechanism used by the case manager to assure the appropriateness of the CPOC. The purpose of follow-up/monitoring contacts is to determine if the services are being delivered as planned; are effective and adequate to meet the recipient's needs; and whether the recipient is satisfied with the services. Through follow-up/monitoring activity, the case manager not only determines the effectiveness of the CPOC in meeting the recipient's needs, but identifies when changes in the recipient's status necessitate a revision in the CPOC.

6. Case Management Reassessment. Reassessment is the process by which the baseline assessment is reviewed and information is gathered for evaluating and revising the overall CPOC. At least every quarter, a complete review of the CPOC must be performed to assure that the goals and services are appropriate to the recipient's needs as identified in the assessment/reassessment process. A reassessment is also required when a major change occurs in the status of the recipient and/or his family.

7. Case Management Transition/Closure. Discharge from a case management agency must occur when the recipient no longer requires services, desires to terminate services, becomes ineligible for services, or chooses to transfer to another case management agency; provided that the recipient has satisfied the requirements of linkage under Section B below. The closure process must ease the transition to other services or care systems. The agency shall not retaliate in any way against the recipient for terminating services or transferring to another agency for case management services.

8. Maintenance of Records. All agency records must be maintained in an accessible, standardized order and format at the DHH enrolled office site. The agency must have sufficient space, facilities and supplies to ensure effective record keeping.

a. Administrative and recipient records must be maintained in a manner to ensure confidentiality and security against loss, tampering, destruction or unauthorized use.

b. The case management agency must retain its records for the longer of the following time frames:

(1) Five years from the date of the last payment;

or

(2) Until the records are audited and all audit questions are answered.

c. Agency records must be available for review by the appropriate state and federal personnel at all reasonable times.

B. Monitoring Provision. The Department of Health and Hospitals and the Department of Health and Human Services have the authority to monitor and audit all case management agencies in order to determine continued compliance with the rules, regulations, policies, and procedures governing case management services.

C. Agency Caseload Limitations. Under the terms of the contractual agreement, case management agencies have a restriction on the total number of recipients it may serve. In a

egion where there are two agencies providing services, the maximum number of recipients that any one agency may serve is sixty percent (60 percent) of the available recipient population. In a regions where there are three agencies providing services, the maximum number of recipients that any one agency may serve is forty percent (40 percent) of the available recipient population.

D. Recipient Freedom of Choice. Selection of Case Management Agency. Recipients have the right to select the provider of their case management services from among those available agencies enrolled to participate in the Program. Recipients are requested to indicate a first and second choice of a provider from among those available providers in the region. If the recipient fails to respond or fails to indicate a second choice of provider and their first choice is full, the Department will automatically assign them to an available provider. Recipients who are auto-assigned may change once, after 30 days but before 45 days of auto assignment, to an available provider.

Recipients must be linked to a case management agency for a six-month period before they can transfer to another agency unless there is good cause for the transfer. Good cause is determined to exist under the following circumstances: 1) the recipient moves to another DHH Region or 2) there are irreconcilable differences between the agency and the recipient. Approval of good cause shall be made by the DHH Case Management Administrator.

Recipients who are being transitioned from a developmental centers into the MD/DD Waiver Program shall receive their case management services through the Office for Citizens with Developmental Disabilities (OCDD).

Recipients who are under the age of 21 and require ventilator assisted care may receive case management services through the Children's Hospital Ventilator Assisted Care Program.

II. Standards of Participation

A. In order to participate as a case management services provider in the Medicaid Program, an agency must comply with licensure and certification requirements, provider enrollment requirements, the case management manual, and the specific terms of individual contractual agreements.

B. Provider Enrollment Requirements. A separate PE-50 and Disclosure of Ownership form is required for each targeted or waiver population and DHH designated region that the agency plans to serve, as well as for each office site it plans to operate. The agency shall provide services only in the parishes of the DHH administrative region for which approval has been granted. The following enrollment requirements are applicable to all case management agencies, regardless of the targeted or waiver group served and failure to comply with these requirements may result in sanctions and/or recoupment and disenrollment.

To serve the MR/DD waiver recipients the agency must have a contract with Medicaid and comply with the terms of the contract.

1. demonstrate direct experience in successfully serving the target population and have demonstrated knowledge of available community services and methods for accessing them including the following:

a. maintain a current file of community resources available to the target population and have established linkages with those resources;

b. demonstrate knowledge of the eligibility requirements and application procedures for federal, state, and local government assistance programs which are applicable to the target population served;

c. employ a sufficient number of case manager and supervisory staff to comply with the staff coverage, staffing qualifications and maximum caseload size requirements described in Section III.A, B, and D;

2. demonstrate administrative capacity and financial resources to provide all core elements of case management services and ensure effective service delivery in accordance with DHH licensing and programmatic requirements;

3. submit a yearly audit of case management costs only and have no outstanding or unresolved audit disclaimer(s) with DHH;

4. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations. The subcontracting of individual case managers and/or supervisors is prohibited. However, those agencies who have been awarded Medicaid contracts for case management services may subcontract with another licensed case management agency for case manager and/or supervisory staff if prior approval has been obtained from the Department;

5. assure that all new staff satisfactorily completes an orientation and training program in the first 90 days of employment. All case managers must attend all training mandated by the Department. Each case manager and supervisor must satisfactorily complete case management related training annually to meet the minimum training requirements;

6. implement and maintain an ongoing quality assurance plan and a self-evaluation plan evidenced by written documentation approved by the Department to determine program compliance and effectiveness;

7. document and maintain recipient records in accordance with federal and state regulations governing confidentiality and licensing requirements;

8. assure the recipient's right to elect to receive or terminate case management services (except for recipients in the MR/DD or Elderly and Disabled Adult Waiver Programs). Assure that each recipient has freedom of choice in the selection of an available case management agency (every six months), a qualified case manager, or other service providers and the right to change providers or case managers; all the above are subject to the recipient's freedom of choice requirements contained in Section I.B. of this rule;

9. assure that the agency and case managers will not provide case management and Medicaid reimbursed direct services to the same recipient(s) unless by an affiliate agency with a separate board of directors;

10. with the recipient's permission, agree to maintain regular contact, share relevant information and coordinate medical services with the recipient's attending physician;

11. demonstrate the capacity to participate in the department's electronic data gathering system(s). All requirements for data submittal must be followed and

articipation is required for all enrolled case management agencies. The software is the property of the department;

12. complete management reports as described in the provider manual.

C. Agencies serving certain specific target groups must meet the following additional participation requirements:

1. Case management agencies serving high risk pregnant women must also demonstrate successful experience with the coordination and/or delivery of services for pregnant women; have a working relationship with a local obstetrical provider and acute care hospital that provides deliveries for 24-hour medical consultation; and have a multidisciplinary team which consists, at a minimum, of the following professionals: physician, primary nurse associate or certified nurse manager, registered nurse, social worker, and nutritionist. The team members must meet the licensure and perinatal experience requirements applicable for services to high-risk pregnant women; and

2. Case managers serving HIV-infected individuals must also satisfactorily complete a one-day training approved by the Department's HIV Program Office.

III. Standards for Payment. In order to be reimbursed by the Medicaid Program, an enrolled provider of targeted or waiver case management service must comply with all of the requirements listed below.

A. Staff Coverage

1. Case management agencies must maintain sufficient staff to serve recipients within the mandated caseload size of 35 with a supervisor to staff ratio of no more than eight case managers per supervisor. All case managers must be employed by the agency at least 40 hours per week and work at least 50 percent of the time during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday). Case management supervisors must be full time employees and must be continuously available to case managers by telephone or beeper at all other times when not on site when case management services are being provided. All exceptions to the maximum caseload size or full time employment of staff requirements must be prior authorized by the Bureau. The agency must have a written policy to ensure service coverage for all recipients during the normal absences of case managers and supervisors or prior to the filling of vacated staff positions.

2. The agency must maintain a toll-free telephone number to ensure that recipients have access to case management services 24 hours a day, seven days a week. Recipients must be able to reach an actual person in case of an emergency, not a recording.

B. Staff Qualifications. Each Medicaid-enrolled agency must ensure that all staff providing case management services meet the following qualifications, skills and training requirements prior to assuming any full caseload responsibilities.

1. Education and Experience for Case Managers. All case managers must meet one of the following minimum education and experience qualifications.

a. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling,

or counseling from an accredited college or university and one year of paid experience in a human-service-related field providing direct services or case management services; or

b. a licensed registered nurse with one year of paid experience as a registered nurse in public health or a human-service-related field providing direct services or case management services; or

c. a bachelor's or master's degree in social work from a social work program accredited by the Council on Social Work Education.

The above-referenced minimum qualifications for case managers are applicable for all targeted and waiver groups. Thirty hours of graduate level course credit in a human-service-related field may be substituted for the one year of required paid experience.

In addition, case managers serving High-Risk Pregnant Women must demonstrate knowledge about perinatal care and meet either one of the qualifications cited above or the following qualification:

d. a registered dietician with one year of paid experience in providing nutrition services to pregnant women.

2. Education and Experience for Case Management Supervisors. All case management supervisors must meet one of the following education and experience requirements. Supervisors of case managers for High-Risk Pregnant Women must demonstrate knowledge about perinatal care in addition to meeting one of these qualifications:

a. a master's degree in social work, psychology, nursing, counseling, rehabilitation counseling, education (with special education certification), occupational therapy, speech therapy or physical therapy from an accredited college or university and two years of paid post-master's degree experience in a human-service related field providing direct services or case management services. One year of this experience must be in providing direct services to the target population served; or

b. a bachelor's degree in social work from a social work program accredited by the Council on Social Work Education and three years of paid post-bachelor's degree experience in a human-service related field providing direct services or case management services. One year of this experience must be in providing direct services to the target population served; or

c. a licensed registered nurse with three years of paid post-licensure experience as a registered nurse in public health or a human service-related field providing direct services or case management services. Two years of this experience must be in providing direct services to the target population served; or

d. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited college or university and four years of paid post-bachelor's degree experience in a human service related field providing direct services or case management services. Two years of this experience must be in providing direct services to the target population served.

The above minimum qualifications for case management supervisors are applicable for all targeted and waiver groups.

Thirty hours of graduate level course credit in a human-service-related field may be substituted for one year of the required paid experience.

3. Training. Training for case managers and supervisors must be provided or arranged for by the case management agency at its own expense. Agencies must send the appropriate staff to all training mandated by DHH.

a. Training for New Staff. A minimum of sixteen (16) hours of orientation must be provided to all staff, volunteers, and students within one week of employment. A minimum of eight hours of the orientation training must address the target population including, but not limited to, specific service needs, available resources and other topics. In addition to the required 16 hours of orientation, all new employees who have no documentation of previous training must receive a minimum of 16 hours of training during the first 90 calendar days of employment related to the target population and the skills and techniques needed to provide case management to that population.

b. Annual Training. Case managers and supervisors must satisfactorily complete a minimum of forty (40) hours of case-management related training annually which may include updates on subjects covered in orientation and initial training. The 16 hours of orientation training required for new employees are not included in the annual training requirement of at least 40 hours.

c. Documentation. All training required in a. and b. above must be evidenced by written documentation and provided to the Department upon request.

C. Supervisory Responsibilities. Each case management supervisor shall be responsible for assessing staff performance, reviewing individual cases, providing feedback, and assisting staff to develop problem solving skills using two or more of the following methods:

1. individual, face-to-face sessions with staff;
2. group face-to-face sessions with all case management staff; or
3. sessions in which the supervisor accompanies a case manager to meet with recipients.

IV. Reimbursement. The reimbursement methodology for optional targeted and waiver case management services is a fixed monthly rate for the provision of the core elements of case management services as described in Section I. A. and in acceptance with the terms of contract with the Bureau. The primary objective of case management is the attainment of the personal outcomes identified in the recipient's comprehensive plan of care.

In addition to the provision of the core elements, a minimum of one home visit per quarter is required for all recipients of optional targeted and waiver case management services. The agency shall ensure that more frequent home visits are performed if indicated in the recipient's CPOC. The purpose of the home visit is to assess the effectiveness of support strategies and to assist the individual to address problems, maximize opportunities and/or revise support strategies or personal outcomes if it is determined necessary.

The case management agency shall also be responsible for monitoring service providers quarterly through telephone monitoring, on-site observation of service visits and review of the service providers' records. The agency must also ensure that the service provider and recipient are given a copy of the recipient's most current CPOC and any subsequent updates.

A technical amendment (Public Law 100-617) in 1988 specifies that the Medicaid Program is not required to pay for case management services that are furnished to consumers without charge. This is in keeping with Medicaid's longstanding position as the payer of last resort. With the statutory exceptions of case management services included in the Individualized Education Programs (IEP'S) or Individualized Family Service Plans (IFSP's) and services furnished through Title V public health agencies, reimbursement by Medicaid payment for case management services cannot be made when another third party payer is liable, nor may payments be made for services for which no payment liability is incurred.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Targeted Case Management Services**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated costs or savings to the state as a result of implementation of this proposed rule. However, \$400 will be incurred in SFY 1999 for the state's administrative expense of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections. However, \$400 will be incurred in SFY 1999 for the federal share of promulgating this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The four providers who were not awarded a contract may no longer provide case management services to the MR/DD Waiver recipients. Implementation of this proposed rule has increased access for recipients in those Regions where there were no case management agencies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of these new programmatic requirements will increase employment of the number of case managers providing services to MR/DD Waiver recipients due to reduction in the ratio of case managers to recipients.

Thomas D. Collins
Director
9904#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 69—Year 2000 Exclusions (LAC 37:XIII.Chapter 87)

In accordance with the provisions of LRS 49:950 et seq. the Administrative Procedure Act, the Commissioner of Insurance hereby gives notice of his intent to adopt Regulation 69 governing the use of Year 2000 endorsements by insurers doing business in Louisiana. This regulation will replace the emergency regulation published in the March, 1999 edition of the *Louisiana Register*.

Preamble

It is a given that come January 1, 2000, and perhaps sooner for some systems, computers which have not been made Y2K compliant will read the wrong date. What is not a given is what results may follow from a computer's miscalculation of the year. It may be that very little will happen but, it is more likely that problems will arise, some of which may be severe in nature.

Most losses from Y2K will be economic losses arising from the cost of replacing or upgrading computer systems and embedded chips and the loss of income if there is a system failure which shuts down business operations. The average cost to upgrade software is \$1.00 to \$2.00 per line. Billions will be spent by private industry and government to make their systems Y2K compliant. The expense of becoming Y2K compliant will be compounded by the shortage of trained personnel, especially those who are trained in the older computer languages such as COBOL and FORTRAN.

As a general rule, insurance policies do not cover economic losses. That is, they do not respond to suits in contract, i.e. for breach of warranty and/or failure to perform or for the consequential damages arising from the breach of contract. However, faced with the possibility of a catastrophic event, the industry has developed exclusions to preclude, or at least minimize, the shifting of the economic costs posed by the Year 2000 problem to it. Most of the Y2K exclusions filed by the industry contain very broad language.

The rationale provided by insurers for approval of the Y2K exclusions includes the potential risk that the cost of repairing, upgrading or replacing non-Y2K compliant computer systems, including systems which employ embedded chips, will be shifted to the insurance industry. There is concern that lawsuits which involve first party disputes which are outside of the

scope of coverage provided under liability policies might be recast as "liability" claims. Another area of concern is the possibility that "data and media" may be recategorized as "tangible property" to satisfy the predicate for "property damage" under property and liability policies. And there may be an increase in suits against software vendors and providers under expanded theories of negligence or professional "tradesperson" liability which may trigger coverage where previously none has existed. The industry says that the Y2K endorsements are necessary to clarify that losses arising from the Y2K problem are not covered losses.

Due in large part to the regulatory problems arising from the use of pollution exclusions in underwriting and claimshandling, the LDOI was not inclined to approve the Y2K exclusions. A sub-committee was formed to study the issue. Eventually the decision was made to approve Y2K exclusions, in order to avoid a disruption in the market, but the approval was conditioned upon industry compliance with Bulletin LIRC 98-04 and with this Regulation.

In adopting Regulation 69 the Department is guided by the following principles taken from the Louisiana Insurance Code.

1. "Insurance is a business affected with the public interest and it is the purpose of this code to regulate that business in all its phases." LSA-R.S. 22:2.

2. Insurers owe to their insureds a duty of good faith and fair dealing and have an affirmative duty to insureds and claimants alike to adjust claims fairly. LRS 22:1220.

3. Liability policies are issued for the benefit of injured persons and for the protection of insureds. LSA-R.S. 22:655.

4. The Commissioner is obligated to protect the public and policyholders from the risk of insurer insolvency. LSA-R.S. 22:2 et seq.

5. The Commissioner is charged with the duty of insuring that insurance policies promote the public interest and safety. LSA-R.S. 22:620.

Additional guidance is derived from traditional civilian principles found in the Civil Code. Of particular applicability is the principle that insurance contracts are contracts of adhesion. See Civil Code Article 2056 and the Comments thereunder. See also 15 Civil Law Treatise §3.

It is intended that this regulation be read in conjunction with Bulletin LIRC 98-04. If there are any inconsistencies between Regulation 69 and Bulletin LIRC 98-04, the provisions of the Regulation govern. This regulation does not restrict the authority of the LDOI, and other regulatory action, as warranted, may be taken in accordance with law.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 87. Year 2000 Exclusions

§8701. Authority

This regulation is adopted pursuant to LRS 22:2 which charges the Commissioner of Insurance with the duty to enforce and administer all of the provisions of the Insurance Code, the purpose of which is to regulate the business of insurance in all of its phases in the public interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8703. Purpose

The purpose of this regulation is to set parameters on the use of Y2K exclusions and endorsements in order to protect the public interest and to assure the continued viability of the insurance market in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8705. Scope and Applicability

This regulation applies to all property and casualty insurance companies, including where referenced, reinsurers and the surplus lines insurance industry, engaged in the business of insurance in this state. It also applies to all contracts of insurance delivered or issued for delivery in this state, and covering property or liability risks located in this state or to be performed in Louisiana regardless of where made or delivered. This regulation governs the use of all Y2K exclusions whether issued before, on or after its effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 25:

§8707. Severability

If any section or provision of this regulation is held invalid, such invalidity shall not affect other sections of provisions which can be given effect without the invalid section or provision, and for this purpose the sections and provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8709. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein:

Economic Loss—means losses arising out of business transactions.

File and Use—means the filing of forms which may then be used by the insurer without receiving prior approval, subject to the LDOI's right of review and right to disallow continued use of the forms.

LDOI—means the Louisiana Department of Insurance and/or the Commissioner of Insurance.

LIRC—means the Louisiana Insurance Rating Commission.

Y2K—means the year 2000 anno domini.

Y2K Exclusion—means all exclusions and endorsements developed by the insurance industry, including but not limited to the ISO forms, to address coverage issues raised by the Y2K problem whether they are captioned Y2K or use terminology such as *date recognition*, *computer related*, *electronic data*.

Y2K Problem—means the inability of computers and other electronic systems including embedded chips to accurately process, provide and/or receive date data from, into, and between the twentieth and twenty first centuries due to a programming design which causes the system to read "00" as 1900 not 2000. The term *Y2K problem* also includes problems resulting from the leap year calculation, date recognition

problems attributed to the Global Positioning System arising on or after August 22, 1999 and the programming of 9/9/99 to read end of field or to delete data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8711. Forms Approval

Y2K exclusions are hereby exempted from the requirement that they be approved prior to use. Such exclusions may be submitted on a "file and use" basis if the filing complies with §8713 of this regulation. Pending filings must be reviewed by the filer to determine compliance. If the original filing does not comply with this regulation the filing must be corrected and resubmitted. Authorization to issue Y2K exclusions expires on January 1, 2002. This section applies only to insurers required by law to file forms with the Commissioner. This exemption applies only to forms. Rate and rule filings must be made with the LIRC as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:620E.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8713. Underwriting Standards

A. Except as provided herein, Y2K exclusions may not be used on a blanket basis. This standard applies to both property and liability coverage. Exclusions should not be used where the insured makes or has made a good faith effort to resolve any Y2K problems on its property or where the insured has demonstrated compliance with Y2K criteria established by the insurer.

1. Personal Lines. Y2K exclusions are not approved for use in personal lines, including homeowner policies, farmowner policies and personal umbrella policies, except for business pursuits coverage. A Y2K exclusion may be used in connection with a personal lines policy's business coverage only if the company can document that there is a realistic risk of exposure which warrants the use of a Y2K exclusion. The underwriting documentation must be maintained in the insured's file for a period of five (5) years from the date of issuance of the exclusion. If a Y2K exclusion is attached to the business pursuits portion of a personal line policy it must provide coverage for ensuing perils otherwise covered by the policy and it must have an exception for on premises bodily injury.

2. Commercial Lines (including but not limited to Commercial Property, Boiler & Machinery, Commercial Auto, General Liability, Professional Liability, Directors & Officers and Business Owners).

a. Property Coverage. ISO's IL 09 35, FP 10 21 and BP 10 04 may be used on a mandatory basis as filed and approved. Y2K exclusions with substantially similar language and which provide coverage for ensuing perils (notwithstanding language in the policy which could be interpreted to the contrary such as "indirectly, concurrently caused, or regardless of other causes") may also be used in the same manner as ISO exclusions. But, because potential Y2K property exposures are definable and measurable hazards a filing which substantially deviates from the ISO exclusions referenced above must justify the conclusion that there is no

impact on premium or specify the premium reduction to be given insureds in exchange for attaching the exclusion.

b. Y2K exclusions which do not contain language stating that ensuing perils are covered may not be used in Louisiana. If approval was granted to a Y2K exclusion in conflict with this provision, the approval is hereby withdrawn.

3. Liability Coverage. Use of Y2K exclusions with liability coverage is strongly discouraged and should be limited to those insureds which have failed to take adequate steps to correct their Y2K problem or which have excessive exposure to outside contamination. "Total" Y2K exclusions, such as ISO's CG 21 60, should be limited to high risk insureds. For other classes, Y2K exclusions which have an exception for bodily injury or which provide for the scheduling of risks and perils, such as ISO's CG 21 63 and CG 21 64, should be used.

a. And, except as provided below, Y2K exclusions may not be used for the following classes of risks: mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools.

b. Y2K exclusions which provide for the scheduling of risks and perils, such as ISO's CG 21 63 and CG 21 64, may be used with a subclasses of the classes stated in the above paragraph if the insurer identifies and justifies the exposure to be excluded or limited in the specific subclass. An insurer attaching a Y2K exclusion to an individual risk within such a subclass must maintain documentation in the underwriting file of each individual risk that identifies and justifies the exposure presented by that particular risk; and, maintain documentation that the insurer has provided loss control information to the insured. This documentation must be maintained in the insured's file for a period of five (5) years from the date of issuance of the exclusion.

B. Surplus Lines. Use of Y2K exclusions by the surplus lines insurance industry should comply with this section. Failure to do so without justification may constitute grounds for removal from the list of approved unauthorized insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3. R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8715. Monitoring of Market Conduct

A. Each admitted insurer must file with the LIRC a list identifying the classes it has determined warrant the use of Y2K exclusion. The filing must contain the criteria used in determining that a particular class of business should be included on the list and identify the type of exclusion which it may use with each class. If an insurer issues a "total" Y2K exclusion (such as ISO's CG 21 60) to a risk within the filed classes it must be able to provide documentation upon request which identifies and justifies the exposure presented by that particular risk. If the list filed with the LIRC contains a subclass of any of the following classes, the insurer must still comply with the requirements imposed by §8713: mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools.

B. Any insurer including a surplus lines insurer which denies coverage or issues a reservation of rights letter to an insured based in toto or in part upon a Y2K exclusion in the policy must notify the LDOI. The notice must be provided to the LDOI within fifteen (15) days of the denial of coverage or issuance of the reservation of rights letter. A copy of the denial of coverage letter or reservations of rights letter is sufficient notice.

C. The LDOI will closely monitor the use of Y2K exclusions to make certain that they are not used inappropriately in underwriting or claimshandling, by admitted insurers, the surplus lines insurance industry or reinsurers. Examples of inappropriate activity are: blanket use of Y2K exclusions; failure to individually underwrite except when authorized by this Regulation; denial of claims inconsistent with underwriting standards; canceling or nonrenewing coverage or refusing reinsurance as a general business practice; widespread unavailability of buy back coverage; and, unsupported blanket denial of claims based upon lack of fortuity, or the known risk and/or expected or intended exclusions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3. R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1215, R.S. 22:1262, R.S. 22:1262.1. R.S. 22:1301 and R.S. 22:1404.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8717. Representations and Warranties

No representation or warranty may defeat coverage or be used to deny a claim by an admitted insurer, reinsurer or surplus lines insurer unless the representation or warranty is (a) material (b) false and (c) made with the intent to deceive. Questionnaires used to assess Y2K exposure are subject to this standard. Any denial of coverage on the grounds that an answer in a questionnaire is erroneous or inadequate, in the absence of fraud, will result in disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3. R.S. 22:619 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8719. Notice

A. No policy including a surplus lines insurance policy, may be issued or renewed with a Y2K exclusion unless the insured is provided with a copy of the Y2K Notice prepared by the LDOI. (The text of the notice can be found in §8719.C.)

B. Notice for renewals must be provided not less than sixty (60) days in advance to the insured and the agent of record; however, the requirement imposed by this Subsection is not applicable to surplus lines insurers.

C. Appendix A

1. Below is the Y2K Notice required by §8719. Issuance of this notice is mandatory. However, insurers are not precluded from issuing their own notices in conjunction with this notice.

2. Formatting instructions. The caption must be in large type and in bold. The text of the notice should be formatted as shown below and should be in a font of not less than 12 point type.

IMPORTANT NOTICE FROM (COMPANY) AND THE LOUISIANA
DEPARTMENT OF INSURANCE

PLEASE READ IT!

A NEW ENDORSEMENT HAS BEEN ATTACHED TO YOUR
POLICY. THE NEW ENDORSEMENT DEALS WITH THE "Y2K"
PROBLEM.

USE OF THIS ENDORSEMENT IS GOVERNED BY LOUISIANA
DEPARTMENT OF INSURANCE REGULATION 69.

IF YOU HAVE ANY QUESTIONS ABOUT THE ENDORSEMENT OR
THE REGULATION YOU MAY CONTACT THE LOUISIANA
DEPARTMENT OF INSURANCE AT THE ADDRESS LISTED
BELOW:

COMMISSIONER JAMES H. "JIM" BROWN
LOUISIANA INSURANCE BUILDING
950 NORTH FIFTH STREET
BATON ROUGE, LA 70802

OR BY TELEPHONE
342-5900, 342-0895, OR 342-0896
1-800-259-5300 OR 1-800-359-5301

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2,
R.S. 22:3. and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

§8721. Exemptions

A. Lines of Coverage. If the commissioner finds that the
application of this regulation unduly hinders the availability of
coverage for a particular line of insurance he may, by written
order, grant an exemption for so long as he deems proper.

B. Individual Insureds. An exemption may be granted upon
written notification to the LDOI by an insurer including a
surplus lines insurer, regarding an individual policyholder
which poses an extraordinary risk due to its failure to take any
steps to remedy its Y2K problem. Documentation that
demonstrates the necessity for the exemption must be
maintained in the insureds file for a period of five (5) years
from the date of issuance of the exclusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2,
R.S. 22:3. and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

§8723. Penalties for Failure to Comply

Noncompliance with this regulation by any insurer subject
to its provisions may result in the imposition of such penalties
as are authorized by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2,
R.S. 22:3. R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1115, R.S.
22:1262.1. and R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

§8725. Effective Date

This regulation shall take effect on July 20, 1999, upon
publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.
HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

Interested parties may submit oral or written comments on
the proposed regulation to Noël Wertz, Senior Attorney, Box
94214, Baton Rouge, LA 70804-9214; telephone (225) 342-
4632. The deadline to submit comments is 5:00 p.m., May 14,
1999.

The proposed regulation is scheduled to become effective
July 20, 1999 and will supersede the emergency regulation
adopted in March, 1999.

James H. "Jim" Brown
Commissioner of Insurance

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

RULE TITLE: Regulation 69—Year 2000 Exclusions

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

It is not anticipated that Regulation 69 would result in any
implementation costs or savings to local or state governmental
units; however, if significant market conduct activity arises as a
result of the regulation, the Department of Insurance might be
required to add a market conduct examiner to staff. Data
available at this time are insufficient to determine how much
activity will result from the regulation.

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

Regulation 69 provides for the levy of penalties against
companies and agents that violate the provisions of LSA R.S.
22:2, 22:3, et seq., LRS 22:941, 22:1115, 22:1262.1 and
22:1457.215; however, there are not sufficient data available to
determine the amount of revenue that might be generated as a
result of those penalties.

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

Insurers subject to the regulation will be required to make
additional filings with the Department of Insurance, but
insufficient data are available to determine whether this will
result in added costs for the companies. Insurance buyers will
benefit because the regulation enhances the department's ability
to protect them against market conduct abuses, but we do not
have adequate information at this time to estimate the dollar
amount of that benefit.

IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)

Regulation 69 is not expected to have any impact on
competition and employment.

Craig S. Johnson
Deputy Commissioner
Management and Finance
9904#068

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Labor Office of Workers' Compensation

Workers' Compensation—Hearing Rules

(LAC 40:I.5525, 5529, 5709, 5803, 5807, 5813, 5817, 5819, 5835, 5905, 5953, 5961, 6001-6007, 6101-6105, 6201, 6203, 6301, 6303, 6313, 6505, 6507, and 6617)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Department of Labor, Office of Workers' Compensation, pursuant to authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to enact rules governing the procedure before the workers' compensation court, LAC 40:I, Subpart 2, Chapter 55, Sections 5525 and 5529; Chapter 58, Sections 5813 and 5819; Chapter 59, Sections 5953 and 5961; Chapter 60, Section 6001; Chapter 61, Section 6101; Chapter 62, Section 6203, and Chapter 65, Section 6505; to amend rules governing the procedure before the workers' compensation court, LAC 40:I, Subpart 2, Chapter 57, Section 5709; Chapter 58, Sections 5807, 5817, and 5835; Chapter 59, Section 5905; Chapter 60, Sections 6003 through 6007; Chapter 61, Section 6103; Chapter 62, Section 6201; Chapter 63, Sections 6301, 6303, and 6313; Chapter 65, Section 6507; and Chapter 66, Section 6617, and to repeal LAC 40:I, Subpart 2, Chapter 58, Section 5803, to provide for the procedural rules for the workers' compensation court. The proposed rules which are set forth below enact Chapter 55, Sections 5525 and 5529; Chapter 58, Sections 5813 and 5819; Chapter 59, Sections 5953 and 5961; Chapter 60, Section 6001; Chapter 61, Section 6101 and Chapter 62, Section 6203 and Chapter 65, Section 6505; amends Chapter 57, Section 5709; Chapter 58, Sections 5807, 5817, and 5835; Chapter 59, Section 5905; Chapter 60, Sections 6003 through 6007; Chapter 61, Section 6103; Chapter 62, Section 6201; Chapter 63, Sections 6301, 6303, and 6313; Chapter 65, Section 6507; and Chapter 66, Section 6617 and repeals Chapter 58, Section 5803.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Hearing Rules

Chapter 55. General Provisions

Subchapter E. Recusation of Judges

§5525. Procedure for Recusal of a Workers' Compensation Judge

Any party to a workers' compensation claim may file a written motion for recusal of the judge to whom the matter is assigned specifying the grounds for recusal. This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the ground for recusal thereafter. In such case, the motion shall be filed immediately after the facts are discovered, but in no case after judgment. Upon receipt of the motion, the judge shall withdraw without further proceedings and authority and immediately refer the matter to the Chief Judge for appointment of an ad hoc judge for

contradictory hearing on the motion. Such hearing shall be held in an expedited manner and in no event later than fourteen days following filing of the motion.

1. Qualification for appointment as an ad hoc judge shall be governed by the provisions of R.S. 23:1310.1(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

5529. Recusation on Court's Own Motion

A judge or mediator may recuse himself after notifying the chief judge, whether a motion for recusation has been filed by a party or not, in any claim in which a ground for recusation exists prior to a judgment being rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:274 (February 1999), amended LR 25:

Chapter 57. Actions

Subchapter B. Settlement

§5709. Joint Petition Settlements

A.1. ...

2. A hearing in open court with all parties present shall be required when one or more parties is not represented by counsel. Appearance by the parties and/or their representative may be waived if all parties are represented by counsel. In special circumstances and in the interest of judicial economy, the judge may allow the unrepresented party to waive his appearance and permit the party to appear by telephone. Appearance by the represented parties and/or their representative may be waived in written form.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:268 (February 1999), amended LR 25:

Chapter 58. Pleadings

Subchapter A. General

§5803. Reserved.

Subchapter B. Supplemental/Amended Pleadings

§5807. Supplemental Pleadings

The judge, on motion of a party, may permit the moving party to file a supplemental claim or answer setting forth causes of action or defenses which have become known since the date of filing the original claim or answer, and which are related to or connected with the claim or defenses asserted. If unopposed, the moving party shall certify to the court that he has spoken to opposing counsel and that no opposition exists. If opposed, a motion and order shall be presented to the judge and the motion shall be heard in a contradictory hearing unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:269 (February 1999), amended LR 25:

Subchapter D. Mediation

§5813. Informal Mediation

A. Within 15 days of receipt of a claim in a district of proper venue but with not less than 5 days notice to the parties, unless the parties agree to meet at an earlier date, the district office shall set the matter for an informal mediation conference with a mediator. The notice may be given by telephone, but shall be confirmed by United States Mail. The notice shall indicate the date, time, and place of the conference. Upon filing of the LDOL-WC-1008 any party to the claim and/or their representative may request a copy of the Form 1008 filed in the case. No such request shall be denied by an employee of the Office of Workers' Compensation Administration.

B. The purpose of the informal mediation conference shall be to mediate and encourage resolution of the dispute. As such the conference is designed for employees, employers and/or adjustors or claims managers. Within 24 hours of receipt of notice of the informal mediation conference, the employer shall notify his workers' compensation insurer or adjuster, in case of a self-insured, of the date, time and place of the conference.

C. At the discretion of the mediator the informal mediation conference may be held by telephone if agreed to by all parties to the claim. Requests for a telephone mediation shall be submitted to the mediator prior to the mediation stating that all parties agree to the telephone mediation.

D. If available, the parties shall bring or mail to the office prior to the conference two (2) legible copies of the following:

1. LDOL-WC-Form 1007;
2. current medical bills and reports;
3. information on workers' compensation benefits previously paid and wage information.

NOTE: If the employer has failed to timely file a completed 1007, the employer shall be assessed a fine in accordance with LAC 40:109. Nothing contained in the Form LDOL-WC-1007 shall be considered as an admission of any fact contained therein.

E. No stenographic report shall be taken at the informal mediation conference and no witnesses shall be called. All statements made at the mediation conference shall be privileged and shall not be admissible in any subsequent hearing or trial.

F. Continuances of the mediation conference shall be permitted for good cause shown by written request to the mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

§5817. Conclusion of Informal Mediation Conference

A. - B. ...

C. Following a mediation conference, at which agreement is reached on all issues in dispute, a report embodying the agreement shall be issued to the parties and the judge within five (5) days thereof. The report may require dismissal of the claim or the filing of an LDOL Form 1011 within a specified period of time. Failure to timely comply with the agreement will result in issuance of citations to all defendants. When all issues in dispute are resolved at any mediation conference, the

Office of Workers' Compensation Administration may waive payment of the \$30.00 filing fee.

D. If any proper party defendant is present or represented at the informal mediation conference, formal citation and service of process shall be made upon that defendant or its representative at that time. If the defendant(s) is participating by telephone, service shall be made by certified mail. The original document(s) shall be mailed to the defendant(s) no later than five days following the completion of the mediation. Citation and service of process shall be proper upon any representative of the defendant appearing at the mediation conference. The affidavit of the mediator or waiver of service signed by the defendant or its authorized representative in any subsequent proceeding shall be prima facie evidence that service has been made in accordance with this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:269 (February 1999), amended LR 25:

§5819. Failure to Attend; Sanctions

A. If any party fails to appear at an informal mediation conference after proper notice, the judge, upon report from the mediator, may fine the delinquent party an amount not to exceed \$500.00, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the judge may assess against the party failing to attend, costs and reasonable attorney's fees incurred by any other party in connection with the conference. If the claimant fails to appear after proper notice, the judge may dismiss the claimant's case without prejudice. The penalties provided for in this Section shall be assessed by the judge only after a contradictory hearing which shall be held prior to the hearing on the merits of the dispute unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

B. When a party without reasonable excuse, fails to appear for the mediation conference; the judge may apply to the District Court as set forth in §5535 for contempt proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter G. Motions

§5835. Ex Parte and Contradictory Motions; Rule to Show Cause Favored

A. ...

B. If the order applied for by written motion is one to which the mover is not clearly entitled or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating. The rule to show cause is a contradictory motion.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:271 (February 1999), amended LR 25:

Chapter 59. Production of Evidence

Subchapter A. General

§5905. Protective Orders

Upon motion by a party or by a person from whom discovery is sought, and for good cause shown after contradictory hearing, the judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. The judge may entertain such motion by telephone conference with all necessary parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:272 (February 1999), amended LR 25:

Subchapter I. Medical Examinations

§5953. Right of an Employee to Written Report of Medical Examination

Entitlement of an employee to the written report of a medical examination shall be as provided in R.S. 23:1125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter K. Sanctions

§5961. Refusal to Obey Subpoena

When a person who, without reasonable excuse, fails to obey a subpoena, the judge may apply to the judge of the appropriate district court as set forth in §5535 for contempt proceedings against such person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:276 (February 1999), amended LR 25:

Chapter 60. Pretrial Procedure

§6001. Status Conference

A. Within sixty days following receipt of the answer a judge shall conduct a status conference for the purpose of setting pre-trial deadlines. Such conference may be held by telephone and may be converted into a pre-trial conference if all parties agree and if stipulated to by all parties in the status conference statement.

B. Issues to be considered and determined at the status conference shall include:

1. the necessity or desirability of amendments to pleadings;
2. discovery anticipated by the parties;
3. deadlines for amendments to pleadings; completion of discovery and scheduling of pre-trial motions;
4. scheduling of the pre-trial conference;
5. scheduling of the trial;
6. such other matters as may aid in the disposition of the action.

C. At the conclusion of the status conference and no longer than fourteen days following the status conference, a

scheduling order, developed by the director, shall be issued by the judge setting forth the actions taken and deadlines set at the conference. Such order shall control the subsequent course of the claim, unless modified to prevent manifest injustice upon motion of a party and after contradictory hearing. A hearing shall not be required if the amendments to the scheduling order are agreed to by all parties to the claim.

D. If a party or his attorney fails to obey the scheduling order, or to appear at the status conference, or is substantially unprepared to participate in the conference or fails to participate in good faith, the judge on his own motion or on the motion of a party, after contradictory hearing, may make an application for contempt proceedings as set forth in §5535.

E. If the status conference is converted to a pre-trial conference, the provisions of §6005 shall apply. The judge in his discretion may waive the requirement of an additional pre-trial conference. If so waived, the provisions of §6007 shall be complied with following the conclusion of the status conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

§6003. Status Conference Statement

A. The parties to the dispute shall file a joint status conference statement with the appropriate district office ten (10) days prior to the scheduled status conference.

B. The status conference statement shall be signed by the party, its representative, or counsel preparing it and shall set forth:

1. - 3. ...
4. a list and brief description of all exhibits to be offered into evidence at trial. Exhibits to be used for impeachment or rebuttal need not be included on the list. Impeachment evidence shall include, but not be limited to, witnesses, documents, photographs, or films. Proposed stipulations as to exhibit authenticity and/or admissibility shall be noted on the exhibit list. Medical reports should be prefaced by a table of contents identifying reports and records by author and date should be arranged in chronological order;
5. ...
6. outstanding discovery;
7. prospects for settlement, if any explored;
8. estimated length of hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:276 (February 1999), amended LR 25:

§6005. Pretrial Conference

A. ...

B. The parties to the dispute shall file a joint pre-trial order with the appropriate district office ten (10) days prior to the scheduled pretrial conference. The joint pre-trial order shall update and finalize all items originally submitted in the status conference statement pursuant to §6003.

C. The party or counsel who prepared and submitted the joint pre-trial order to the workers' compensation court should attend the pretrial conference. Any substitute permitted by the court to attend the conference shall be knowledgeable of all

aspects of the case and shall possess the necessary authority to commit his client or associate regarding changes, stipulations, compromise/settlements, and trial dates.

D. Unless circumstances beyond the control of the parties and/or the court exist, the trial date selected for the case should be 60 days from the date of the pretrial conference.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

§6007. Pre-Trial Order

A. At the conclusion of the pretrial conference, the judge shall set the case for trial and shall sign the pre-trial order which shall be filed in the suit record and mailed to all parties at the same time and in the same manner.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

Chapter 61. Hearings

Subchapter A. Expedited Hearings

§6101. Examination of an Injured Employee

The examination of an injured employee shall be governed by R.S. 23:1121 and 1124.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter B. Continuance

§6103. General

A.1. Every contested motion for a continuance shall be tried summarily and contradictorily with the opposite party in open court unless waived upon joint motion by the parties to the claim. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

2. If uncontested, the moving party shall certify to the court that he has spoken to opposing counsel, that no opposition exists and that all witnesses have been timely notified of the continuance.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

§6105. Form Required

Any request for a continuance shall be in written form and may be filed at any time prior to the scheduled trial date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

Chapter 62. Trial

Subchapter A. Trial Procedure

§6201. General

Only those issues listed in the pretrial order issued by the judge shall be litigated at trial. No new issues shall be raised except by written order of the judge for good cause shown after contradictory hearing or upon joint waiver of the hearing by the parties to the claim. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:278 (February 1999), amended LR 25:

§6203. Trial on the Merits

The trial of a workers' compensation claim shall be governed by R.S. 23:1317.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Chapter 63. Judgments

Subchapter A. General

§6301. Submission of Evidence

A. ...

B. If a transcript of the testimony is ordered by the judge, it shall be filed within fifteen days by the court reporter unless for good cause shown. The case or matter shall not be considered as fully submitted until the court reporter files the transcript.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:279 (February 1999), amended LR 25:

§6303. Completion of Trial; Pronouncement of Judgment

A. The procedures for completion of trial and pronouncement of judgement shall be governed by R.S. 23:1310.5(A)(1) and 1201.3(A). All such orders, decisions, or awards shall be rendered no later than thirty calendar days after conclusion of trial.

B. A written decision shall only be rendered if requested in written form by any party to the claim within ten days of the signing of the judgment. The written decision shall be issued by the judge not later than thirty days following the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:279 (February 1999), amended LR 25:

Subchapter C. Modification

§6313. Amendment of Judgment

A. A final judgment may be amended by the judge on its own motion or on motion of any party:

1. to alter the phraseology of the judgment, but not the substance; or

2. to correct errors of calculation.

B.1 If the motion is unopposed, the motion may be signed in chambers.

2. If the motion is opposed, it shall be heard in a contradictory hearing unless waived upon joint motion of the parties to the claim. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:279 (February 1999), amended LR 25:

Chapter 65. Special Disputes

Subchapter A. Attorney Fees

§6505. Attorney Fees; Conduct of Parties

A. Claims for attorney fees pursuant to R.S. 23:1125, 1201, 1201.2, 1208, or any other provision of law granting the court authority to award fees due to the conduct of a party, shall be accompanied by an affidavit in support of the fees requested. Such affidavit shall be filed after the court has rendered judgment or as an attachment to post-trial briefs if permitted and will be considered as a rule to set costs and fees. The affidavit shall set forth:

1. the date the attorney was retained;
2. any comments as to the novelty or difficulty of the case and issues;
3. any other information pertinent to the fees to be awarded; including, but not limited to, experience of the attorney, problems encountered, coordination of claims and benefit issues, etc.

B. Upon receipt of the affidavit, the judge shall fix a proposed fee and shall cause notice of the proposed fee to be served on all parties at the same time and in the same manner. Any party may object to any application for attorney fees by filing a motion in opposition to the fee request along with reasonable grounds to oppose the attorney's fee claim within five calendar days after receipt of the application. A contradictory hearing may be held at which time additional testimony and argument may be presented by the disputing parties if requested in the motion in opposition. Within ten days of the submission of all evidence, a judgment shall be rendered determining the attorney fee.

C. Nothing contained herein shall preclude the judge from assessing a reasonable penalty for actions found to be arbitrary, capricious, and without probable cause.

D. Awards, judgments or orders of attorney fees shall be filed into the record and a certified copy provided to the attorney requesting the fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter B. Social Security Offset

§6507. Social Security Offset

A. A request for offsets pursuant to R.S. 23:1225 made in connection with a disputed claim shall be made by filing Form

LDOL-WC-1008 or by responsive pleading. An order shall be issued recognizing the entitlement to the offset for social security benefits from the date of judicial demand, and setting the amount of the offset after a determination of the character of the disability, the right to the offset, and calculation of the offset. A contradictory hearing may be set by the judge for this determination. Notice shall be provided to the claimant or his representative prior to issuance of the order.

B. A request for offsets pursuant to R.S. 23:1225 made in connection with a claim not in dispute may be made by motion on form LDOL-WC-1005(A) or by letter, filed in the appropriate district office. When properly filed, the motion or letter requesting an offset may be granted ex parte from date of filing. No fee shall be charged in connection with a request made under this Subsection.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:281 (February 1999), amended LR 25:

Chapter 66. Miscellaneous

Subchapter C. Waiver of Costs for Indigent Party

§6617. Affidavits of Poverty; Documentation; Order

A.1. - 2. ...

B. When the application and supporting affidavits are presented to the court, it shall inquire into the facts, and if satisfied that the party is entitled to the privilege granted by §6613 it shall render an order permitting the party to proceed, or to continue the claim without paying the costs in advance, or as they accrue, or furnishing security therefor. The submission by the party of supporting documentation that the party is receiving public assistance benefits or that the party's income is less than or equal to one hundred twenty-five percent of the federal poverty level shall create a rebuttable presumption that the party is entitled to the privilege granted by §6613. The court may reconsider such an order on its own motion at any time in a contradictory hearing with all parties present unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:282 (February 1999), amended LR 25:

Inquiries concerning the proposed enactment may be directed to: Dan Boudreaux, Assistant Secretary, Office of Workers' Compensation Administration, Louisiana Department of Labor, P.O. Box 94094, Baton Rouge, Louisiana 70804-9094.

Interested persons may submit data, views, arguments, information or comments on the proposed repeal and enactment in writing, to the Louisiana Department of Labor, P.O. Box 94094, Baton Rouge, Louisiana 70804-9094, Attention: Dan Boudreaux, Assistant Secretary, Office of Workers' Compensation Administration. Written comments

must be submitted and received by the Department within 10 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Department within 20 days of the date of this notice.

Gary Forster
Secretary of Labor

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Workers' Compensation—Hearing Rules**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rules will not result in any implementation costs (or savings) to the state or local governmental units other than those costs directly associated with the publication of these rules. The rules are a recodification of existing procedures and practices, which have not been rewritten since 1990; and will allow for a set of complete and consistent procedures for use by all offices. There is no anticipated impact on local governmental units before the Hearings Section for resolution of disputed workers' compensation claims.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no direct effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no cost or economic benefits to directly affected persons or nongovernmental groups. This is simply a recodification of the existing procedures and practices.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule(s) should not affect compensation among the participants in the workers' compensation system. However, a more accountable and accessible resolution process for disputed workers' compensation claims would create a more productive and cost effective workplace, whether public or private for the increased safety of employees throughout the state.

Gary Forster
Secretary of Labor
9904#032

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Public Information Program and Media Access
(LAC 22:I.337)

In accordance with the Administrative Procedure Act La. R.S. 49:953(B), the Department of Public Safety and Corrections, Corrections Services hereby gives notice of intent to adopt regulations dealing with the Public Information Program and Media Access.

**Title 22
CORRECTIONS, CRIMINAL JUSTICE AND
LAW ENFORCEMENT
Part I. Corrections**

Chapter 3. General

§337. Public Information Program and Media Access

A. Purpose. To state the Secretary's policy regarding methods that will be used within the Department to maintain informative relationships with the public, the media and other agencies.

B. Applicability. Undersecretary, Assistant Secretaries, all Wardens, the Director of Probation and Parole, the Director of Youth Services, and the Director of Prison Enterprises. Each Unit Head shall develop procedures to facilitate interaction with the public, the media, and other agencies and shall ensure that necessary information and instructions are furnished to affected employees and inmates.

C. Policy. It is the Secretary's policy to maintain positive, informative relationships with the public, the media and other agencies, consistent with the security and privacy interests of the Department, its staff, and inmates. All legitimate news media organizations shall be allowed reasonable access to the state's correctional facilities unless security considerations dictate otherwise.

D. Definitions. For the purpose of this regulation, the following definitions shall apply.

Commercial Productions—freelance photographers, writers and film makers who intend to sell their work product for profit to other companies. A tabloid is also considered a commercial production.

News Media—properly credentialed and identifiable news coverage organizations. This includes representatives of general circulation newspapers, legitimate periodical magazines of national circulation sold through newsstands and/or mail subscriptions to the general public, local/national/international news services, and radio/television stations holding a Federal Communications Commission license.

Tabloid—a newspaper of small format giving the news in condensed form, usually with illustrated, often sensational material.

Unit Head—refers to the head of an operational unit, such as Wardens, the Director of Probation and Parole, the Director of Youth Services, or the Director of Prison Enterprises.

E. Media Procedures

1. Unit procedures should address emergency and non-emergency responses to the news media and include, at a minimum, the following:

- the identification of areas in the facility that are accessible to news media representatives;
- the contact person for routine requests for information;
- identification of data and information protected by federal or state privacy laws, or federal and state freedom of information laws;
- special events coverage;
- news release policy;

f. the designation of staff authorized to speak with the news media.

2. All media interested in making inquiries, conducting interviews, or seeking approval to visit a correctional facility shall first contact the Unit Head or his media relations designee. All requests must be approved by the Unit Head or his designee and requests must be made within a reasonable time frame, considering the scope of the story and the unit's ability to adequately prepare for the visit. The Unit Head will give notice to the Secretary and appropriate Assistant Secretary of any significant or potentially controversial event.

3. All media visitors will be provided with an escorting staff member for the duration of the visit.

4. Only those persons authorized by the Secretary or Unit Head shall release information to the media regarding official matters. Authorized spokespersons shall be knowledgeable of issues and Departmental policy and shall ensure the accuracy of information before releasing it.

5. In the event of an institutional emergency, all public and media access to the institution may be limited. The Warden or his media relations designee will periodically brief all media on the situation. A media briefing center may be established at a remote location.

6. All on-site media contacts with inmates are at the sole discretion of the Unit Head.

7. Written permission should be obtained from an inmate prior to interviewing, photographing, and/or audio or video recording of the inmate. With reference to juvenile inmates, written permission must be obtained from the juvenile's parent, guardian, or attorney, (except when the juvenile is not identifiable). Death Row inmates must also have their attorney's written approval prior to an interview, photograph, and/or audio or video recording. No remuneration will be provided to any inmate.

8. Interviews with inmates housed in maximum custody areas for behavioral problems and/or poor conduct records are discouraged.

9. Access to inmates should also be restricted or disallowed to prevent them from profiting from their crimes, either materially or through enhanced status as a result of media coverage.

F. Procedures for Commercial Productions

1. All commercial productions are required to make a written request to the Unit Head for access. Written requests will include, at a minimum, the following basic information, as applicable:

- a. name, job title and employer of person requesting visit, (if free-lance—who they represent);
- b. topic of story, where it will be used, what purpose;
- c. name of individual(s) to be interviewed;
- d. date and time of arrival, anticipated duration;
- e. name of all persons accompanying requestor;
- f. if applicable, a hold harmless clause: "I recognize a visit to a correctional facility may present certain risks/hazards. I agree to assume all ordinary and/or usual risks to my personal safety inherent in a visit to an institution of this type."

2. All commercial productions are required to read, understand and sign a Location Agreement Form upon their arrival at the unit. The Location Agreement will specifically outline the scope of the work to be performed. The Unit Head (or designee) may require review of the material prior to distribution solely to insure that it comports with the Location Agreement Form. Any material found to be in violation may be restricted or forfeited prior to leaving the grounds, and any effort to publish or distribute the material could subject the author/producer to civil liability.

G. Public Information Procedures

1. All staff shall be responsive to inquiries from the public and local, state and federal agencies by providing prompt, complete responses to all correspondence and other requests.

2. Inquiries from legislative and executive bodies may be referred to authorized staff as designated by the Secretary or Unit Head.

H. Location Agreement Form

I, _____, am aware and agree that upon my entrance to the grounds of _____, I have been authorized by the Unit Head to interview, photograph, and/or audio or video record specific material as follows:

I understand that inmates and visitors have the right not to be interviewed, photographed, and/or audio or video recorded. A release must be signed by inmates and visitors who agree to be interviewed, photographed, and/or audio or video recorded.

I also understand that I am not authorized to interview, photograph and/or audio or video record outside the above stated parameters for security reasons. Any material found by authorities to be in violation may be restricted or forfeited prior to my leaving the grounds, and any effort to publish or distribute the material could subject me to civil liability.

Name: _____
Signature _____ Print _____

Affiliation: _____

Witnessed on this ____ day of _____,
19____, at _____, LA by:

Witness

Title

I. Inmate Media Release Form

I, _____, an inmate confined at _____, hereby voluntarily agree to be interviewed, photographed, and/or audio or video recorded by _____. I also voluntarily agree to have the interview, photograph, and/or audio or video recording broadcast or published by _____.

I do this of my own free will without coercion, threats of punishment or promise of reward from the Louisiana Department of Public Safety and Corrections and _____, their agents and employees. I hereby relieve and release the Louisiana Department of Public Safety and Corrections and _____, their agents and employees, of any responsibility and/or liability which may occur directly or

indirectly as a result of my participation in, and the subsequent publication and/or broadcast of the interview, photograph, and/or audio or video recording.

Inmate Name & Number
Witnessed on this ____ day of _____,
19____, at _____, LA by:

Witness

Title

J. Visitor Media Release Form

I, _____, a visitor at _____, hereby voluntarily agree to be interviewed, photographed, and/or audio or video recorded by members of _____. I also voluntarily agree to have the interview, photograph, and/or audio or video recording broadcast or published by _____.

I do this of my own free will without coercion, threats of punishment or promise of reward from the Louisiana Department of Public Safety and Corrections and _____, their agents and employees. I hereby relieve and release the Louisiana Department of Public Safety and Corrections and _____, their agents and employees, of any responsibility and/or liability which may occur directly or indirectly as a result of my participation in, and the subsequent publication and/or broadcast of the interview, photograph, and/or audio or video recording.

Visitor's Signature

Witnessed on this ____ day of _____,
19____, at _____, LA by:

Witness

Title

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (504) 342-6741. Comments will be accepted through the close of business at 4:30 p.m. on May 20, 1999.

AUTHORITY NOTE: Promulgated in accordance with American Correctional Association (ACA) Standards 2-CO-1A-25 through 27-1 (Administration of Correctional Agencies) 3-4020 through 3-4022 (Adult Correctional Institutions).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Corrections Services, LR 25:

Richard L. Stalder
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Public Information Program and Media Access

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs associated with the proposed rule.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect in revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no additional costs or benefits directly affecting persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There are no estimated effects on competition and employment.

Bernard E. Boudreaux
Undersecretary
9904#025

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

New Dealer Applications and Requirements; Maximum
Cylinder Limit
(LAC 55:IX.105, 107, 181)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 40:1846 relative to the authority of the Liquefied Petroleum Gas Commission to make and enforce reasonable rules and regulations governing the storage, sale, and transportation of liquefied petroleum gases, notice is hereby given that the Commission proposes to amend its rules.

The proposed rule changes will do nine things:

1. will require a formal application for a permit at each location for applicants for Class VI and Class VIII permits;
2. will require Class 6-X permit holders to pay a minimum first year permit fee of \$75 for their first location, plus \$50 for each 2 - 11 locations, plus \$25 for each 12 - infinity locations. For all succeeding years the permit fee shall be .225 of 1 percent of gross annual sales of liquefied petroleum gases of all locations or with a minimum, determined by the computation method used on their first year's permit fee, whichever is greater;
3. will require all DOT specifications cylinders of 100 lbs. propane capacity or less to be filled by weight only. Also this action will provide for three exceptions to this rule;
4. will require DOT specification cylinders of 100 lbs. propane capacity or less not to be refilled, continued in service or transported unless they are properly qualified or requalified if they are in commerce or transportation;
5. will not require DOT specifications cylinders of more than 100 lbs. propane capacity to be qualified or requalified unless they are in commerce and transportation;
6. will require all 4 to 40 lb. propane capacity DOT cylinders fabricated after August 1, 1999 to be equipped with an overfilling prevention device and a fixed maximum liquid level gauge;

7. will require all 4 to 40 lb. propane capacity DOT cylinders to be retrofitted with an overfilling prevention device either when the cylinders are requalified under Louisiana regulations or by April 1, 2002 whichever comes first;

8. will not allow the filling of any 4 to 40 lb. propane capacity DOT specification cylinders after April 1, 2002 unless equipped with an overfilling prevention device;

9. would except lift truck cylinders and cylinders identified and used for welding and cutting gases from the overfilling prevention device requirement.

The proposed rule changes complies with the statutory authority granted the Commission under LRS 40:1846.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter A. New Dealers

§105. Applications

Any person, firm, or corporation desiring to enter the liquefied petroleum gas business in the state of Louisiana must file formal application with the Liquefied Petroleum Gas Commission. In the case of Class VI and Class VIII a formal application must be filed for each location. Other classes of permits and registrations require only one formal application to be filed. Formal application(s) must be filed for Class I, 90 days, and for Classes II, III, IV, V, VI, VII, VIII and IX, 30 days prior to the date of the commission meeting which the application is to be heard. Application for Classes VI-X, VII-E, and R-1, R-2 registrations have no delay prior to the granting of a permit. These permits will be granted by the office of the Director, upon complying with all Commission requirements, and ratified by the Liquefied Petroleum Gas Commission at the first subsequent Commission meeting. Presence of applicant or his authorized representative is required at the commission meeting when the application is heard, except in the cases of Class VI-X, VII-E, and R-1, R-2 registrations where appearance is waived. In no cases will the applicant's supplier be the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant to be represented by another party, other than a principal officer, director, manager, or attorney. The formal application form(s) will be furnished by the commission upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 24:460 (March 1998), LR 25:

§107. Requirements

A.1. ...

2. Application must have been approved by the Liquefied Petroleum Gas Commission except in the cases of Classes VI-X, VII-E and R-1, R-2 registrations then only after they have been ratified by the Liquefied Petroleum Gas Commission.

3. - 5.b. ...

6. Applicant must have paid a permit fee in the amount of \$75, except for Class VII-E, which shall be \$100, and R-1, R-2 registrations, which shall be \$37.50 and Class VI-X shall be in the amount of \$75 for the first location, plus \$50 for each 2 - 11 locations, plus \$25 for each 12 - infinity locations. For succeeding years the permit fee shall be .2250 of 1 percent of annual gross sales of liquefied petroleum gases with a minimum of \$75, except in the case of Class VI-X which the minimum permit fee shall be \$75 for the first location, plus \$50 for each 2 - 11 locations, plus \$25 for each 12 - infinity locations; or .2250 of 1 percent of annual gross sales of liquefied petroleum gases of all locations whichever is greater. For Classes not selling liquefied petroleum gases in succeeding years the permit fee shall be \$75, except registrations shall be \$37.50 per year.

6.a. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24: 2311 (December 1998), LR 25:

Subchapter I. Adoption of Standards

§181. National Fire Protection Association Pamphlet Numbers 54 and 58

A. - E.7. ...

8. With regard to §4-4.3.1, NFPA 58-1995—The maximum permitted filling limit for any container, where practical, shall be determined by weight. DOT specification cylinders of 100 lbs. propane capacity or less that are in commerce or transportation shall be filled by weight only. Exceptions:

a. DOT cylinders filled from bobtails at customer facilities if equipped for filling by volume and are not transported over the highways of the State of Louisiana. An example would be forklift cylinders filled by bobtails and used on premises and not placed in transportation over the highways of the State of Louisiana.

b. DOT cylinders filled by customers from customer tank facilities, if equipped for filling by volume and are not transported over the highways of the State of Louisiana. An example would be forklift cylinders filled by customers from their tanks and used on their premises and not placed in transportation over the highways.

c. DOT cylinders that are permanently affixed if equipped for filling by volume. An example would be motor fuel tanks or DOT cylinders permanently affixed to recreational vehicles.

9. With regard to §4-4.3.2, NFPA 58-1995—§4-4.3.2.a shall not be applicable in Louisiana. §4-4.3.2.b DOT specification cylinders of 100 lbs. propane capacity or more. (See DOT regulations requiring spot weight checks.)

10. With regard to §2-2.1.4.b, NFPA 58-1995—DOT cylinders of 100 lbs. or less shall not be refilled, continued in service, or transported unless they are properly qualified or

requaified for L. P. Gas service, if they are in commerce or transportation. DOT cylinders of 100 lbs. or more shall not be refilled, continued in service or transported unless they are properly qualified or requaified for L. P. Gas service in accordance with DOT regulations, meaning in commerce and transportation. Qualification or requaification must be in accordance with C-3.2 of Appendix C, NFPA 58-1995.

11. Adding NFPA 58-1998, §2-3.1.5 as a supplement to NFPA 58-1995—In Louisiana all new cylinders from 4 lbs. through 40 lbs. propane capacity fabricated after August 1, 1999 shall be equipped with a listed overfilling prevention device (OPD) and a fixed maximum liquid level gauge. All DOT cylinders now in use must be retrofitted with the overfilling prevention device (OPD) either when the cylinders are requaified under Louisiana regulations or by April 1, 2002. No cylinder shall be filled in Louisiana after April 1, 2002 unless equipped with an overfill prevention device (OPD). Lift truck cylinders and cylinders identified and used for welding and cutting gases are exempt from these provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1994), amended LR 24:470 (March 1998), LR 25:

The commission will hold a public hearing May 27, 1999, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through May 20, 1999 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: New Dealer Applications and Requirements; Maximum Cylinder Limit

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

There will be a small implementation cost to state agency, which will be the cost of publication in the *Louisiana Register*. This cost is estimated to be less than \$100. There will be no implementation cost to any local governmental unit.

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

There will be an estimated increase in revenues to the state regulatory governmental unit in fiscal year 1999-2000 and succeeding fiscal years of \$10,075 per year as a result of the proposed permit fee change. There may be an increase in revenues to the state governmental unit and the local governmental units in the form of additional sales tax revenues as a result of additional expenditures to retrofit some propane cylinders with an overfilling prevention device and the purchase of new cylinders necessary to meet required specifications; however these possible increases cannot be calculated at this time.

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

The affected regulated group will experience an increase in their cost by the same amount as the estimated increase in revenues by the state regulatory governmental unit, which is estimated to be \$10,075 per year in fiscal year 1999-2000 and succeeding fiscal years. There may be an economic loss or cost to the user group or persons who would be required to retrofit to meet the overfill protection device requirements. These total costs cannot be calculated at this time but are estimated to be not more than \$20 per unit retrofitted.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no significant impact or effect on competition and employment because of the proposed actions.

Nancy Van Nortwick
Undersecretary
9904#030

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Rehabilitation Services

Vocational Rehabilitation Policy Manual (LAC 67:VII.Chapter 1)

In accordance with the provisions of R.S. 49:953(B), the Administrative Procedures Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) is revising its Vocational Rehabilitation Policy Manual. These revisions are being made in order to comply with H.R. 1385, Workforce Investment Act of 1998, Title IV Rehabilitation Act Amendments of 1998. This Notice of Intent supersedes the prior Notice of Intent published on February 20, 1999. Emergency Rulemaking was invoked for §109.J.4.a.(2) and b.(2) and §117.B, and became effective on March 24, 1999. Said 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.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. Vocational Rehabilitation Policy Manual

§101. Agency Profile

A. Mission. To assist persons with disabilities in their desire to obtain or maintain employment and/or to achieve independence in their community by providing rehabilitation services and by working cooperatively with business and other community services.

B. Program Administration. Louisiana Rehabilitation Services, hereafter referred to as LRS, will secure appropriate resources and support in administering the various programs under the responsibility of the agency. These programs include, but are not limited to:

1. Vocational Rehabilitation Program;
2. Title VII Part B Independent Living Program;
3. Louisiana Commission for the Deaf;

4. Title VI Supported Employment Program;
5. Randolph-Sheppard Blind Vending Facility Program;
6. Personal Care Attendant Program;
7. Community and Family Support Program;
8. Traumatic Head and Spinal Cord Injury Trust Fund (THSCI)

C. The Manual's Function. This manual sets forth the policies of LRS in carrying out the agency's mission, specifically as this mission relates to the Vocational Rehabilitation Program.

D. Exceptions. The director or designee shall have the sole responsibility for any exceptions to this policy manual.

E. Nondiscrimination. All programs administered by and all services provided by LRS shall be rendered on a nondiscrimination basis without regard to handicap, race, creed, color, sex, religion, age, national origin, duration of residence in Louisiana, or status with regard to public assistance in compliance with all appropriate state and federal laws and regulations to include Title VI of the Civil Rights Act of 1964.

F. Compliance with State Laws, Federal Laws and Regulations, and Departmental Policies and Procedures. Staff shall comply with all state and federal laws, agency and civil service rules and regulations, Title I of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) of 1990 (Public Law 101-336).

G. Cost-Effective Service Provision. Services shall be provided in a cost-effective manner.

H. Records

1. A record must be maintained for each applicant/client and shall contain documentation to support a counselor's decision regarding eligibility, Order of Selection, and subsequent decisions to provide, deny, or amend services.

I. Data Collection. Staff shall ensure the provision of client and financial data necessary for the operation of the agency's information and financial system as well as the Blind Registry.

J. Expeditious Service Delivery. All referrals, applications and provision of services will be handled expeditiously and equitably.

K. Client Assistance Program. All programs, including community rehabilitation programs, and projects that provide services to individuals with disabilities under this Act shall advise such individuals, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the client assistance program, including information on means of seeking assistance under such program.

L. Equal Employment Opportunities

1. LRS will comply with Title VII of the Civil Rights Act of 1964 as amended, and Title V of the Rehabilitation Act of 1973 as amended.

2. In addition, all community rehabilitation programs supported by grants or funding from the Rehabilitation Services Administration, must be operated in compliance with these laws.

M. Affirmative Action Plan. LRS will take affirmative action to ensure that the following will be implemented at all levels of administration: recruit, hire, place, train and promote

in all job classifications without regard to non-merit factors such as race, color, age, religion, sex, national origin, disability or veteran status, except where sex is a bonafide occupational qualification.

N. Comprehensive System of Personnel Development. LRS will provide a comprehensive system of personnel development in accordance with the Rehabilitation Act Amendments of 1998.

O. *Applicant/Client*—For purposes of representation, the term *applicant/client* refers to an individual who has applied for vocational rehabilitation services or in certain cases, a parent, or family member, or guardian, an advocate, or any other authorized representative of the individual.

P. Cooperative Agreements. LRS will use services provided under a cooperative agreement as comparable services and benefits.

Q. Services to American Indians with Disabilities. LRS will provide vocational rehabilitation services to American Indians with disabilities to the same extent that these services are provided to other individuals with disabilities which will include, as appropriate, services traditionally available to Indian tribes on reservations.

R. Misrepresentation, Fraud, Collusion, or Criminal Conduct

1. Individuals who obtain access to the services provided by LRS through means of misrepresentation, fraud, collusion, or criminal conduct shall be held responsible for the return of funds expended by LRS on the individual's behalf. Further, such actions shall result in the closure of the individual's vocational rehabilitation case record. Failure on the individual's part to make reparation of funds to the agency may result in legal action being taken by LRS.

2. In cases in which LRS is in possession of clear evidence of misrepresentation, fraud, collusion, or criminal conduct on the part of the individual for the purpose of obtaining services for which the individual would not otherwise be eligible, the individual's case will be referred to the Department of Social Services, Bureau of General Counsel for consultation and/or investigation. If Department of Social Services, Bureau of General Counsel concurs or determines that the individual has obtained services through misrepresentation, fraud, collusion, or criminal conduct, a certified letter will be directed to the individual by the LRS Counselor demanding payment in full of funds which have been expended by the agency on the individual's behalf. The failure of the individual to comply with the demand for reparation may result in legal action being taken on behalf of LRS.

S. Informed Choice. LRS shall provide information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process, consistent with the following:

1. to inform each applicant and eligible individual through appropriate modes of communication;
2. to assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;
3. to maintain flexible procurement guidelines and methods that facilitate the provision of services;

4. to provide or assist eligible individuals in acquiring information necessary to develop the components of the Individualized Employment Plan.

T. Construction. Nothing in this Policy Manual shall be construed to create an entitlement to any vocational rehabilitation service.

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:

§103. Enabling Legislation

A. The Rehabilitation act Amendments of 1998, as contained in H.R. 1385, Workforce Investment Act of 1998.

B. Code of Federal Regulations. Volume 34, Sections 361, 363, 365, and 370.

C. Louisiana Revised Statutes

1. R.S. 49:664, Section 6B (1)(b) (Legislative Act that created the Department of Health and Hospitals), R.S. 36:477(c) (Legislative Act that created the Department of Social Services).

2. R.S. 46:331-335 mandates that a register be maintained of all persons known to be legally blind in the state. (Louisiana Rehabilitation Services maintains and regularly updates the Blind Registry.)

3. Act 19 of 1988 effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

4. Act 109 of 1984, R.S. 39:1595.3, and Act 291 of 1986, R.S. 39:1594(I), enacted and authorized the State Use Law.

5. Act 10 of 1994, R.S. 18:59(I)(2), 61(A)(1), 62(A), 103(A), enacted and authorized to provide for the implementation of the National Voter Registration Act of 1993.

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 21:473 (May 1995), LR 25:

§105. Confidentiality

A. General Statement. All client information is confidential. All personal information in the possession of the state agency shall be used only for purposes directly connected with the administration of the program.

B. Notification to Clients. Individuals asked to supply the agency with information concerning themselves shall be informed of the agency's need to collect confidential information and the policies governing its use, release, and access including:

1. the Consent to Release Case Record Information form contained in case files which must document that individuals have been advised of the confidentiality of information pertinent to their case;

2. the principal purpose for which the agency intends to use or release the requested data;

3. whether the individuals may refuse, or are legally required to supply the requested data;

4. any known consequence arising from not providing the requested information;

5. the identity of other agencies to which information is routinely released.

C. Release of Confidential Information

1. The case file must contain documentation concerning any information released with the individual's written consent. Informed written consent is not needed for the release of personal records to the following:

a. public assistance agencies or programs from which the client has requested services or to which the client is being referred for services under the circumstances for which the client's consent may be presumed;

b. the Louisiana Department of Labor and military services of the United States government;

c. doctors, hospitals, clinics and rehabilitation centers providing services to clients as authorized by Louisiana Rehabilitation Services;

d. schools or training centers, when LRS has authorized the service or is considering authorizing such services, and the information is required for the client's success in the program, for the safety of the client, or is otherwise in the client's best interest.

2.a. Confidential information will be released to an organization or an individual engaged in research, audit, or evaluation only for purposes directly connected with the administration of the state program (including research for the development of new knowledge or techniques which would be useful in the administration of the program).

b. Such information will be released only if the organization or individual furnishes satisfactory assurance that:

i. the information will be used only for the purpose for which it is provided;

ii. that it will not be released to persons not connected with the study under consideration; and

iii. that the final product of the research will not reveal any information that may serve to identify any person about whom information has been obtained through the state agency without written consent of such person and the state agency.

c. Information for research, audit, or evaluation will be issued only on the approval of the director.

d. The client must be advised of these conditions.

6. LRS may also release personal information to protect the individual or others when the individual poses a threat to his/her safety or to the safety of others.

D. Client Access to Data. When requested in writing by the involved individual or an authorized representative, clients or applicants have the right to see and obtain in a timely manner copies of any information that the agency maintains on them, including information in their case files, except:

1. medical and/or psychological information, when the service provider states in writing that disclosure to the individual would be detrimental to the individual's physical or mental health;

2. medical, psychological, or other information which the counselor determines harmful to the individual;

Note: Such information may not be released directly to the individual, but must be released, with the individual's informed consent, to the individual's representative, or a physician or a licensed or certified psychologist.

3. personal information that has been obtained from another agency or organization. Such information may be released only by or under the conditions established by the other agency or organization.

E. Informed Consent. Informed consent means that the individual has signed an authorization to release information and such authorization is as follows:

1. in a language that the individual understands;
2. dated;
3. specific as to the nature of the information which may be released;
4. specifically designates the parties to whom the information may be released;
5. specific as to the purpose(s) for which the released information may be used;
6. specific as to the expiration date of the informed consent which must not exceed one year.

F. Confidentiality—HIV Diagnosis. Each time confidential information is released on applicants or clients who have been diagnosed as HIV positive, a specific informed written consent form must be obtained.

G. Court Orders, Warrants and Subpoenas. Subpoenaed case records and depositions are to be handled in the following manner:

1. with the written informed consent of the client, after compliance with the waiver requirements (signed informed consent of client or guardian), the subpoena will be honored and/or the court will be given full cooperation;
2. without the written informed consent of the client, when an employee is subpoenaed for a deposition or receives any other request for information regarding a client, the employee will:
 - a. inform the regional manager or designee of the request;
 - b. contact the attorney, or other person making the request, and explain the confidentiality of the case record information; and request that such attorney or other person obtain a signed informed consent to release information from the client or guardian;
 - c. inform the regional manager or designee if the above steps do not resolve the situation. In this case, the regional manager or designee will then turn the matter over to the Department of Social Services' legal counsel.
3. when an employee is subpoenaed to testify in court or to present case record information in court concerning a client, the employee is to do the following:
 - a. notify the regional manager or designee;
 - b. honor the subpoena;
 - c. take subpoenaed case record or case material to the place of the hearing at the time and date specified on the subpoena;
 - d. if called upon to testify or to present the case record information, inform the court of the following:

i. that the case record information or testimony is confidential information under the provisions of the 1973 Rehabilitation Act and amendments;

ii. the subpoenaed case record information is in agency possession;

iii. agency personnel will testify and/or release the case record information only if ordered to do so by the court.

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 22:993 (October 1996), repromulgated LR 25:

§107. Applicant/Client Appeal Rights

A. Administrative Review

1. The administrative review is a process which may be used by applicants/clients (or as appropriate the applicant's/client's representative) for a timely resolution of disagreements. However, this process may not be used as a means to delay a fair hearing conducted by an Impartial Hearing Officer. The administrative review will allow the applicant/client an opportunity for a face to face meeting in which a thorough discussion with the regional manager or designee can take place regarding the issue(s) of concern. All administrative reviews render a final decision expeditiously after receipt of the initial written request from the applicant/client.

2. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the administrative review appeal process unless the services being provided under the current Individualized Plan for Employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

3. In order to insure that an applicant/client is afforded the option of availing themselves of the opportunity to appeal agency decisions impacting their vocational rehabilitation case, adequate notification by the counselor must include:

- a. the agency's decision;
- b. the basis for, and effective date of the decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the name and address of the regional manager who should be contacted in order to schedule an administrative review, mediation session, or fair hearing.

Note: All administrative reviews must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

B. Mediation

1. The mediation process will provide the applicant/client, (or as appropriate the applicant's/client's

representative) an opportunity for dispute resolution proceedings which are fair, effective, and expeditious. This process may be used by applicants/clients for a timely resolution of disputed findings of an Administrative Review; or as a direct avenue of appeal bypassing the Administrative Review option, but must occur prior to the Fair Hearing option.

2. The mediation process will also be offered to an applicant/client as an option at the time a formal request for a fair hearing is made. However, this process may not be used as a means to delay or supplant a Fair Hearing conducted by an Impartial Hearing Officer.

3. The mediation process will be conducted by a qualified and Impartial Mediator as expeditiously as possible upon receipt of the initial written request from the applicant/client. A list of qualified Impartial Mediators will be maintained by Louisiana Rehabilitation Services.

4. The mediation process must be entered into voluntarily by all parties. Discussions that occur during the mediation session will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties involved in the mediation session will be required to sign a confidentiality pledge prior to the commencement of such process. The Impartial Mediator must ensure that if an agreement is reached by the parties in dispute, this agreement is set forth in a written mediation agreement prior to the conclusion of the session. This written agreement is the only information from the mediation session that may be presented at any subsequent due process hearing or civil proceeding.

5. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the Mediation process unless the services being provided under the current Individualized Plan for Employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

6. In order to insure that an applicant/client is afforded the option of availing themselves the opportunity to appeal agency decisions impacting their vocational rehabilitation case, adequate notification by the Counselor and/or Regional Manager must include:

- a. the agency's decision (inclusive of an Administrative Review, if conducted);
- b. the basis for, and effective date of the decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the Mediation session or Fair Hearing;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the name and address of the Regional Manager who should be contacted in order to schedule a mediation session or fair hearing.

Note: All mediation sessions must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

C. Fair Hearing

1. The fair hearing is the final level of appeal within Louisiana Rehabilitation Services. Subsequent to a decision being reached as a result of the fair hearing, any further pursuit of the issue by the applicant/client (or, as appropriate, the applicant's/client's representative) must be through the public court system.

2. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review; at any point after a mediation session; or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing will be conducted by an Impartial Hearing Officer after receipt of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute if mediation has not been exercised already.

3. An Impartial Hearing Officer shall be selected on a random basis to hear a particular case by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The Impartial Hearing Officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services as expeditiously as possible.

4. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the fair hearing process unless the services being provided under the current Individualized Plan for employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

5. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to pursue a fair hearing, adequate notification by the counselor and/or Regional Manager must include:

- a. the agency's decision (inclusive of an administrative review and/or mediation agreement, if conducted);
- b. the basis for, and effective date of, that decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the fair hearing;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the means through which a fair hearing may be requested, including the name and address of the regional manager.

Note: All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/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 21:189 (February 1995), LR 25:

§109. Eligibility and Ineligibility

A. Criteria for Eligibility

1. An individual is eligible for vocational rehabilitation services, if the individual:

- a. has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
- b. requires vocational rehabilitation services to prepare for, secure, retain, or regain employment; and
- c. can benefit in terms of an employment outcome from vocational rehabilitation services.

B. Presumption of Benefit

1. An individual who meets the criteria in §109.A.1.a and b shall be presumed to be an individual who can benefit in terms of an employment outcome from vocational rehabilitation services, unless LRS can demonstrate by clear and convincing evidence that such individual is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

2. In making the demonstration of clear and convincing evidence, LRS shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, except under limited circumstances when an individual cannot take advantage of such experiences.

a. Such trial work experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine clear and convincing evidence that the individual is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services.

b. Trial work experiences shall also include appropriate supports and training.

C. Presumption of Eligibility

1. An individual who has a disability or who is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 U.S.C. 401 et. seq. And 1381 et. seq.) shall be:

a. Considered to be an individual with either a significant disability or a most significant disability, such determination to be made by LRS; and

b. Presumed to be eligible for vocational rehabilitation services, provided that the individual intends to achieve an employment outcome.

2. LRS can find an SSDI or an SSI recipient ineligible for vocational rehabilitation services if LRS can demonstrate by clear and convincing evidence through the use of trial work experiences that the severity of the individual's disability prohibits the individual from benefitting from vocational rehabilitation services in terms of an employment outcome.

D. Determinations by Officials of other Agencies

1. To the extent appropriate and consistent with the requirements of this section, LRS will use determinations made by officials of other agencies, particularly Education Officials, regarding whether an individual satisfies one or more factors relating to whether an individual is an individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment.

E. Compliance Provisions

1. Nondiscrimination and Nonexclusion

a. Eligibility decisions must be made without regard to sex, race, age, creed, color or national origin of the individual applying for services.

b. No group of individuals is excluded or found ineligible solely on the basis of type of disability.

c. No upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any individual with a disability who otherwise meets the basic eligibility requirements specified in this manual.

d. Louisiana Rehabilitation Services does not impose a residence requirement. Illegal aliens, however, cannot be served. Disabled aliens who have a legal, unexpired work visa, and who otherwise meet the eligibility criteria, can be served.

F. Determination of Ineligibility

1. A determination of ineligibility for vocational rehabilitation services is made:

a. when LRS is in possession of clear and convincing evidence that an individual has no physical and/or mental impairment which constitutes or results in a substantial impediment to employment; or

b. when LRS is in possession of clear and convincing evidence that an individual with a disability does not require vocational rehabilitation services to prepare for, secure, retain, or regain employment; or

c. when LRS is in possession of clear and convincing evidence that an individual is incapable of benefitting from vocational rehabilitation services, including available supported employment services in terms of an employment outcome.

2. If an individual who applies for vocational rehabilitation services is determined (based on the review of existing data and, to the extent necessary, the assessment of activities of a trial work period as described under the Presumption of Benefit) not eligible for services, or if an eligible individual receiving services under an Individualized Plan for Employment (IPE) is determined to be no longer eligible for services, LRS shall:

a. Provide an opportunity for full consultation with the individual or, as appropriate, the individual's representative; and

b. Inform the individual, or as appropriate, the individual's representative, in writing of:

i. The reason(s) for the ineligibility determination; and

ii. An explanation of the means by which the individual may express and seek a remedy for an dissatisfaction with the determination, including the

procedures for review by an impartial hearing officer and the availability of services from the Client Assistance Program; and

iii. A referral to any other agencies or programs from whom the individual may be eligible to receive services, including other components of the statewide workforce investment system.

3. Any ineligibility determination that is based on a finding that the individual is incapable of benefitting in terms of an employment outcome shall be reviewed:

- a. within 12 months; and
- b. annually thereafter, if such a review is requested by the individual or the individual's representative.

G. Use of Existing Information

1. To the maximum extent appropriate and consistent with the requirement of this Section, for purposes of determining eligibility of an individual for vocational rehabilitation services, LRS shall use information that is existing and current (as of the date of the determination of the eligibility), including information available from the individual, programs, and providers, particularly education officials and the Social Security Administration.

H. Time Frame for Making an Eligibility Determination

1. LRS shall determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless:

- a. Exceptional and unforeseen circumstances beyond LRS' control preclude making an eligibility determination within 60 days and the individual agrees to an extension of time; or
- b. LRS is exploring an individual's abilities, capabilities, and capacity to perform in trial work experiences.

I. Individual with a Significant Disability

1. Individuals eligible for vocational rehabilitation services are determined to be significantly disabled if the disabling condition and subsequent functional limitations fall into one of the following three categories:

- a. the individual is a recipient of Social Security Disability Insurance (SSDI); or
- b. the individual is a recipient of Supplemental Security Income (SSI) by reason of blindness or disability (SSI based on age alone does not automatically render an individual significantly disabled); or
- c. the individual is one:
 - i. who has a severe physical or mental impairment which severely limits one or more functional capacities (mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
 - ii. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time (extended period of time means six months or longer); and
 - iii. who has one or more physical or mental impairments resulting from:
 - (a). amputation;
 - (b). arthritis;
 - (c). autism;

- (d). blindness;
- (e). burn injury;
- (f). cancer;
- (g). cerebral palsy;
- (h). cystic fibrosis;
- (i). deafness;
- (j). head injury;
- (k). heart disease;
- (l). hemiplegia;
- (m). hemophilia;
- (n). respiratory or pulmonary dysfunction;
- (o). mental retardation;
- (p). mental illness;
- (q). multiple sclerosis;
- (r). muscular dystrophy;
- (s). musculoskeletal disorders;
- (t) neurological disorders (including stroke and epilepsy);
- (u). paraplegia, quadriplegia, other spinal cord conditions;
- (v). sickle cell anemia;
- (w). specific learning disability;
- (x). end-stage renal disease; or
- (y). another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

J. Order of Selection

1. LRS follows an Order of Selection to ensure that individuals with the most significant disabilities receive priority for vocational rehabilitation services.

2. The following factors shall not be used either in determining the order of selection or in determining the placement category of eligible individuals:

- a. any duration of residency requirement, provided the individual is present in the state;
- b. type of disability;
- c. age, gender, race, color, creed, or national origin;
- d. source of referral;
- e. type of expected employment outcome;
- f. the need for specific services or anticipated cost of services required by an individual; or
- g. the income level of an individual or an individual's family.

3. Prerequisite to Placement in the Order of Selection

a. Assignment to a selection group is made after a determination of both of the following:

- i. eligibility for Vocational Rehabilitation Services; and
- ii. significance of disability.

4. Selection Groups. In accordance with the criteria below, an individual is placed in one of the following:

a. Selection Group I—Most Significantly Disabled. An eligible individual is considered most significantly disabled if all of the following apply:

- i. the individual has one or more physical or mental impairments resulting from any of the following:
 - (a). amputation;
 - (b). arthritis;

- (c). autism;
 - (d). blindness;
 - (e). burn injury;
 - (f). cancer;
 - (g). cerebral palsy;
 - (h). cystic fibrosis;
 - (i). deafness;
 - (j). head injury;
 - (k). heart disease;
 - (l). hemiplegia;
 - (m). hemophilia;
 - (n). respiratory or pulmonary dysfunction;
 - (o). mental retardation;
 - (p). mental illness;
 - (q). multiple sclerosis;
 - (r). muscular dystrophy;
 - (s). musculoskeletal disorders;
 - (t) neurological disorders (including stroke and epilepsy);
 - (u). paraplegia, quadriplegia, other spinal cord conditions;
 - (v). sickle cell anemia;
 - (w). specific learning disability;
 - (x). end-stage renal disease; or
 - (y). another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations; and
- ii. the individual's significant physical or mental impairment seriously limits four or more functional capacity areas; and
- iii. the individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time;
- b. Selection Group II—Significantly Disabled. An eligible individual is considered significantly disabled if all of the following apply:
- i. an eligible individual has one or more physical or mental impairments resulting from any of the following:
 - (a). amputation;
 - (b). arthritis;
 - (c). autism;
 - (d). blindness;
 - (e). burn injury;
 - (f). cancer;
 - (g). cerebral palsy;
 - (h). cystic fibrosis;
 - (i). deafness;
 - (j). head injury;
 - (k). heart disease;
 - (l). hemiplegia;
 - (m). hemophilia;
 - (n). respiratory or pulmonary dysfunction;
 - (o). mental retardation;
 - (p). mental illness;
 - (q). multiple sclerosis;
 - (r). muscular dystrophy;
 - (s). musculoskeletal disorders;

- (t) neurological disorders (including stroke and epilepsy);
 - (u). paraplegia, quadriplegia, other spinal cord conditions;
 - (v). sickle cell anemia;
 - (w). specific learning disability;
 - (x). end-stage renal disease; or
 - (y). another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations; and
- ii. the individual's severe physical or mental impairment seriously limits three functional capacity areas; and

iii. the individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time;

c. Selection Group III—Non-Significantly Disabled. An eligible individual is considered non-significantly disabled if existing functional limitations do not meet the criteria of an individual with either a most significant disability or a significant disability;

d. Public Safety Officers. Priority shall be given in all selection groups to those individuals with disabilities whose disability arose from an impairment sustained in the line of duty while performing as a public safety officer and the immediate cause of that impairment was a criminal act, apparent criminal act, or a hazardous condition resulting from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities;

e. Functional Capacity Areas. Functional capacity areas are identified as follows:

- i. mobility;
- ii. motor skills;
- iii. communication;
- iv. self-care;
- v. self-direction;
- vi. interpersonal skills;
- vii. work tolerance;
- viii. work skills;

f. Other Considerations

i. individuals shall be placed in the highest priority category for which they are eligible;

ii. upon placement into a priority category, individuals will be notified in writing of their category assignment and of their right to appeal their category assignment.

5. Scope of Services Available. LRS' order of selection shall not limit the scope of services available for eligible individuals within the selection group(s) being served.

6. Information and Referral. LRS will, as appropriate, refer those individuals in selection Groups(s) not being served to other components of the statewide workforce investment system that are best suited to address the specific employment needs of the individual with a disability.

7. Continuity of Services. LRS shall provide for continuity of services once an otherwise eligible individual is

selected for and begins to receive services under an IPE, irrespective of the severity of the individual's disability.

8. Other Assurances

a. All individuals within a higher priority category for services shall be served before individuals in the next lowest priority category.

b. When it is impossible to serve all eligible individuals within a priority category, the individuals (in addition to referral to other components of the statewide workforce investment system) will be placed on a deferred services waiting list. Individuals on the deferred services waiting list will be served in chronological order based on the date of application.

c. If the order of selection is rescinded, individuals on deferred services waiting lists and in unserved categories will be contacted and served in chronological order based on the date of application.

9. Client Participation in the Cost of Services. All LRS policy relative to client participation in the cost of services shall apply to individuals receiving services under the order of selection.

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:

§110. Information and Referral Services

A. Purpose. The purpose of an expanded system of information and referral is as follows:

1. To ensure that individuals with disabilities who are not being served under LRS' Order of Selection receive accurate vocational rehabilitation information and guidance to assist such individuals in preparing for, securing, retaining, or regaining employment; and

2. To ensure that such individuals, as appropriate, are referred to other federal and state programs, including other components of the statewide workforce investment system.

B. Services

1. Information

a. As appropriate, to the extent that such services are not purchased by LRS, LRS will provide the following informational vocational rehabilitation services:

- i. individualized guidance and counseling;
- ii. individualized vocational exploration;
- iii. supervised job placement referrals;
- iv. assistance in securing reasonable accommodations.

2. Referral

a. As appropriate, LRS will make a referral to the appropriate Federal or State program, including other components of the statewide workforce investment system, that is best suited to address the specific employment needs of the individual with a disability.

b. Information provided by LRS to the individual will contain:

- i. a copy of the notice of the referral by LRS to the other agency carrying out the program; and
- ii. information identifying a specific point of contact within the agency carrying out the program; and

iii. information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

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 25:

§111. Comprehensive Assessment

A. Purpose

1. To make a determination of the employment-related needs of the individual with a disability.

2. To make a determination of the objectives, nature, and scope of vocational rehabilitation services required for development of the Individualized Plan for Employment (IPE) of an eligible individual.

B. Scope

1. To the extent additional data is necessary, LRS shall conduct a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, of the eligible individual, including the need for supported employment.

2. The comprehensive assessment includes, to the degree needed, an assessment of the following:

- a. personality;
- b. interests;
- c. interpersonal skills;
- d. intelligence and related functional capacities;
- e. educational achievements;
- f. work experience;
- g. vocational aptitudes;
- h. personal and social adjustment;
- i. employment opportunities;
- j. medical, psychiatric, and/or psychological factors;
- k. other pertinent vocational and educational factors;
- l. appraisal of patterns of work behavior;
- m. services needed to acquire occupational skills,

develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

C. Additional Considerations

1. The comprehensive assessment is limited to information necessary to identify the rehabilitation needs of the eligible individual and to develop the Individualized Plan for Employment (IPE).

2. LRS will use as a primary source of information, to the maximum extent possible and appropriate, existing information obtained for the purpose of determining eligibility.

3. LRS will use, to the maximum extent possible and appropriate, information provided by the individual and/or the individual's family.

D. Trial Work Periods

1. As appropriate, LRS will use trial work periods to explore an individual's abilities, capabilities, and capacity to perform in work situations.

2. An assessment will be conducted as often as necessary and at least every 90 days.

3. As appropriate, LRS will provide a referral for the

provision of rehabilitation technology services to assess and to develop the capacities of the individual to perform in a work environment.

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 24:

§113. Individualized Plan for Employment (IPE)

A. Purpose of the Individualized Plan for Employment (IPE). The Individualized Plan for Employment, hereafter referred to as IPE, and all subsequent amendments assure that each individual determined eligible for vocational rehabilitation services or determined appropriate for extended evaluation services shall have a formal plan, jointly developed and agreed upon by the individual (or as appropriate the individual's family member or other authorized representative) and the rehabilitation counselor.

B. Client Choice and Client Participation

1. The format of the IPE, to the maximum extent possible, will be in the language or mode of communication understood by the individual. Each individual's IPE will assure that the plan was developed in a manner empowering the individual with the ability to make an informed choice relative to the selection of an employment goal, intermediate objectives, services and service providers.

2. The client (or where appropriate, the client's parent, guardian or other representative) must sign the IPE and must receive a copy of the original IPE and all subsequent amendments.

C. Options for Developing an IPE

1. After completion of the assessment for determining eligibility and vocational rehabilitation needs (comprehensive assessment), LRS shall provide the eligible individual, or the individual's representative, in writing, and in an appropriate mode of communication, with information on the individual's options for developing an IPE including the following:

a. Information on the availability of technical assistance, to the extent determined to be appropriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the IPE;

b. A description of the full range of components that shall be included in an IPE;

c. As appropriate, an explanation of agency guidelines and criteria associated with financial commitments concerning an IPE;

d. As appropriate, additional information the eligible individual requests or LRS determines necessary; and

e. As appropriate, information on the availability of assistance in completing designated LRS forms required in developing an IPE.

D. Mandatory Components of an IPE

1. Regardless of the approach selected by an eligible individual to develop an IPE, an IPE shall, at a minimum, contain components consisting of the following:

a. the specific employment goal chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual resulting in

employment, and to the maximum extent appropriate, in an integrated setting;

b. the specific vocational rehabilitation services (provided in the most integrated setting appropriate for the service and consistent with the individual's informed choice) needed to achieve the employment goal, including as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training and management of such services;

c. the approximate dates for the initiation of each service and the anticipated date for the completion of each service;

d. a time frame for the achievement of the employment goal;

e. the entity chosen to provide the vocational rehabilitation service and the methods to procure such services;

f. the criteria to evaluate the individual's progress towards achievement of the employment goal.

g. the terms and conditions of the IPE, including, as appropriate, information describing:

i. responsibilities of LRS;

ii. responsibilities of the eligible individual including those responsibilities the individual will assume in relation to the employment goal;

iii. if applicable, the participation of the eligible individual in paying for the costs of the planned services;

iv. responsibility of the eligible individual with regard to applying for and securing comparable benefits;

v. if applicable, the responsibilities of any other entities as the result of arrangements made pursuant to comparable services and benefits.

h. For an eligible individual with the most significant disabilities for whom an employment goal is in a supported employment setting, information identifying:

i. the extended services needed;

ii. the source of extended services, or to the extent that the source of extended services cannot be identified at the time of development of the IPE, a description of the basis for concluding that there is reasonable expectation that such source will become available.

i. a statement of the projected need for post-employment services.

j. The rights and remedies available to the individual through the Appeal Process and information regarding the availability of the Client Assistance Program.

E. Review and Amendment

1. The IPE shall be reviewed as least annually by a qualified vocational rehabilitation counselor and the eligible individual, or as appropriate, the individual's representative; and

2. Amended, as necessary, by the individual, or as appropriate, the individual's representative, in collaboration with a qualified vocational rehabilitation counselor, (if there are substantive changes in the employment goal; the vocational rehabilitation services to be provided; or the service providers of the services (which amendments shall not take effect until agreed to and signed by the eligible individual, or as appropriate, the individual's representative, and a qualified

vocational rehabilitation counselor employment by LRS).

F. IPE Document

1. An IPE for employment shall be a written document prepared on forms provided by LRS.

2. An IPE shall be developed and implemented in a manner that afford eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the IPE, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services consistent with Informed Choice as defined in LRS in Chapter 1 of this policy manual.

3. An IPE shall be agreed to, and signed by, such individual or, as appropriate, the individual's representative; and approved and signed by a qualified vocational rehabilitation counselor employed by LRS.

4. A copy of the IPE shall be provided to the individual or, as appropriate, the individual's representative, in writing; and if appropriate, in the native language or mode of communication of the individual.

G. Content of the IPE for Case Closure as "Ineligible"

1. The IPE and amendments relating to case closure based on the decision that the individual is no longer capable of achieving an employment goal, must document with clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services, to include available supported employment services. Such decisions shall be reviewed and reassessed twelve months from the date of closure.

2. IPE closure documents shall set forth the rights and remedies available to the individual through the Appeal Process and provide information regarding the availability of the Client Assistance Program.

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:

§115. Financial

A. Comparable Services and Similar Benefits

1. Determination of Availability

a. Prior to providing any vocational rehabilitation service to an eligible individual, except those services specified below in c.i.(a)-(f), LRS will determine whether comparable services and benefits are available under any other program (other than a program carried out under Title IV, Rehabilitation Act Amendments of 1998) unless such a determination would interrupt or delay:

i. the progress of the individual toward achieving the employment outcome identified in the IPE of the individual;

ii. an immediate job placement; or

iii. the provision of such service to any individual at extreme medical risk.

b. Awards and Scholarships. For purposes of the determination of availability in A.1. above, comparable benefits do not include awards and scholarships based on merit.

c. Exceptions to Use of Comparable Services and Benefits

i. The following vocational rehabilitation services can be provided without making a determination of the availability of comparable services and benefits:

(a). services provided through LRS' Information and Referral System;

(b). assessment for determining eligibility and vocational rehabilitation needs, including if appropriate, assessment by personnel skilled in rehabilitation technology;

(c). counseling and guidance, including information an support services to assist an individual in exercising informed choice;

(d). referral and other services needed to secure necessary services from other agencies through cooperative agreements, if such services are not available from LRS;

(e). job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(f). rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

B. Individual's Participation in the Cost of Vocational Rehabilitation Services.

1. LRS will consider, through budgetary analysis of assets, income, monthly liabilities, and comparable services and similar benefits, the financial need of eligible individuals and individuals who are under extended evaluations for purposes of determining the extent of the individual's participation in the costs of certain vocational rehabilitation services.

a. Neither a financial needs test, not a budgetary analysis, is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

i. assessment for determining eligibility and priority for services, except those non-assessment services that are provided during an extended evaluation to explore the individual's abilities, capabilities, and capacity to perform in work situations (trial work periods);

ii. assessment for determining vocational rehabilitation needs;

iii. counseling, guidance, including information and support services to assist an individual in exercising informed choice;

iv. referral and other services to secure needed services from other agencies through cooperative agreements, if such services are not available from LRS;

v. job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

vi. rehabilitation technology assessments;

vii. vocational and other training services when the training program is related to the achievement of a direct job placement outcome, including supported employment, on-site training, and on-the-job training;

viii. personal assistance services directly related to a direct job placement outcome and provided simultaneously with any of the above-listed vocational rehabilitation services.

(Examples include attendant, reader, scribe, interpreter, and adjustment/orientation and mobility training services.)

b. A financial needs test will be applied through budgetary analysis to determine the ability of the individual to financially contribute to the cost of the following vocational rehabilitation services:

- i. physical restoration and/or mental restoration;
- ii. maintenance;
- iii. transportation;
- iv. books and supplies;
- v. occupational tools and equipment;
- vi. telecommunication, sensory, and other technological aids and devices, including assistive technology devices;
- vii. cost services to other family members;
- viii. occupational licenses;
- ix. discretionary training fees such as car registration fees, student health service fees, etc. not included in tuition;
- x. home modifications for accessibility;
- xi. vehicle modifications/renovations;
- xii. adjustment/orientation and mobility, attendant, reader, scribe, and interpreter services not directly related to a direct job placement outcome;
- xiii. vocational and other training services, such as college/university, vocational and proprietary school training, not related to a direct job placement outcome;
- xiv. other goods and services;
- xv. post-employment services consisting of the services listed above.

c. The only exception to items §115.B.1.b.xii. and xiii is as follows:

i. To preserve LRS' Continuity of Services provision in the Order of Selection, LRS exempted those eligible individuals who had an IWRP/IPE in effect prior to July 20, 1999, which is the date of the adoption of this rule change; therefore, items xii. and xiii. in b. above will only apply to those individuals who had an IWRP/IPE developed after July 20, 1999.

d. The following services are exempt from the application of a budget surplus, if the Counselor determines that a surplus exists:

- i. adjustment/orientation and mobility services;
- ii. attendant services;
- iii. reader services;
- iv. scribe services, notetaker/braille services;
- v. interpreter services;
- vi. assistive technology services.

e. When it is determined by a counselor and an eligible client that self-employment, through establishment of a small business enterprise, is the best option for the client, the client must provide a minimum cash capital contribution of 20 percent of the total transaction. (Refer to LRS Policy on Small Business Enterprise.)

f. An individual's status for the budget analysis will be determined as follows:

i. the agency will perform the budget analysis on the basis of the resources of both the client and the spouse if the client is married;

ii. the agency will perform the budget analysis on the basis of the resources of the family unit for all single clients living in the family home as a family member. Temporary absences from the home, such as for vacations, school, or illness, count as time lived in the home.

iii. the agency will perform the budget analysis on an individual who has returned to the family unit on the basis of the resources of only that individual if the following conditions are met:

(a). the individual's disability has precluded their obtaining or maintaining employment; and

(b). the individual has a documented history of self-sufficiency that includes providing over one-half the costs of maintaining a residence for at least one year prior to their return to the family unit; and

(c). the individual's parent(s), legal guardian, or other head of household provides documentation that indicates such person(s) do not claim the individual as an exemption for federal and/or state income tax purposes.

(d). Family unit is defined as the client and the client's parents or the client and any significant other(s), such as aunts, uncles, friends, legal guardians, etc., who are living in the household and are providing support for the maintenance of the household in which the client lives. Adult siblings of the client can be excluded as a member of the family unit for income reporting; but, must also be excluded from the family unit in the determination of allowable monthly liabilities.

g. Individuals who do not provide LRS with necessary financial information to perform the budget analysis will be eligible only for those vocational rehabilitation services that are not conditioned upon an analysis to determine the extent of the individual's participation in the costs of such services.

h. Individuals who have defaulted on a student loan must make good faith efforts with the lender to clear the default or to defer payment before LRS will participate in the cost of the client's vocational rehabilitation program.

i. Simultaneously with the comprehensive assessment, at the annual review of the IPE, and at any time there is a change in the financial situation of either the client or the family, the counselor will perform a budget analysis for each client requiring vocational rehabilitation services as listed above in §115.B.1.b.i.-xv. The amount of client participation in the cost of their vocational rehabilitation program will be based upon the most recent budget analysis at the time the relevant IPE or amendment is developed.

2. State and Departmental Purchasing Procedures. All applicable state, departmental and agency purchasing policies and procedures must be followed.

a. LRS does not purchase vehicles or real estate.

b. Fee Schedule. Services and rates of payment must be authorized in accordance with LRS' Medical Fee Schedule and LRS' Technical Assistance and Guidance Manual, Section 500 which lists approved service providers.

c. Approval of Service Providers

i. Any service provider approved by the agency must agree not to make any additional charge to or accept any

additional payment from the client or client's family for services authorized by the agency.

ii. Relatives of vocational rehabilitation clients will not be approved as a paid service provider unless such individuals are professionally and occupationally engaged in the delivery of such services by offering their services to the general public on a regular and consistent basis.

d. Prior Written Authorization and Encumbrance

i. Either before or at the same time as the initiation or delivery of goods or services, the agency must be in possession of the proper authorizing document. The only exception is in an emergency situation.

ii. If oral authorization of approved services is made in an emergency situation, there must be prompt documentation, and the authorization must be confirmed in writing and forwarded to the provider of the services.

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 21:837 (August 1995), LR 25:

§117. Vocational Rehabilitation Services

A. Vocational Rehabilitation Services are any services described in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment goal that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including:

1. an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

2. counseling and guidance, including information and support services to assist an individual in exercising informed choice;

3. referral and other services to secure needed services from other agencies through cooperative agreements developed, if such services are not available from LRS;

4. job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

5. vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this Title unless maximum efforts have been made by LRS and the individual to secure grant assistance in whole or in part, from other sources to pay for such training;

6. to the extent that financial support is not readily available from a source other than LRS (such as through health insurance of the individual or a comparable service and benefit consistent with LRS policy, Chapter 115 Financial, Comparable Services and Similar Benefits) diagnosis and treatment of physical and mental impairments, including:

a. corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that correction or

modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

b. necessary hospitalization in connection with surgery or treatment;

c. prosthetic and orthotic devices;

d. eyeglasses and visual services as prescribed by qualified personnel who meet State license laws;

e. special services, artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and

f. diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State license laws;

7. maintenance for additional costs incurred while participating in and assessment for determining eligibility and vocational rehabilitation needs or while receiving other services under an IPE and needed by the individual to achieve an employment goal;

8. transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service under an IPE and needed by the individual to achieve an employment goal;

9. on-the-job or other related personal assistance services provided while an individual is receiving other services under an IPE and needed by the individual to achieve an employment goal;

10. interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State license law;

11. rehabilitation teaching services, and orientation and mobility services for individuals who are blind;

12. occupational licenses, tools, equipment, and initial stocks and supplies;

13. technical assistance and other consultation services to conduct market analyses, develop plans and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment goal;

14. rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

15. transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the IPE;

16. supported employment services;

17. services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome identified in the IPE;

18. specific post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment.

B. Scope of Services for Diagnosis and Treatment of Physical and Mental Impairments

1. LRS will not provide ongoing medical rehabilitation treatment services. After medical science has restored the individual to their maximum level of healthy functioning, LRS

can provide vocational rehabilitation services to remediate residual deficits medical science could not restore, if such impairments impact the individual's ability to work. LRS can provide all necessary and appropriate vocational rehabilitation services if these services address these functional deficits and assist the individual in performing job functions and/or gaining knowledge or skills necessary to compete for and obtain employment.

2. LRS will not provide experimental services or supplies.

C. 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.

D. Scope of Establishment of Small Business Enterprise

1. The purpose of a self-employment goal for a client is to establish an individual with a disability in a small business enterprise that will provide sufficient income to support the individual and their family, thereby enabling the individual to meet ordinary daily living expenses and business costs. LRS desires to make self-employment an available option only when it is clearly demonstrated that self-employment is the best choice for the client.

2. When it is determined by a counselor and an eligible client that self-employment, through establishment of a small business enterprise, is the best option for the client, the following apply:

a. the client must present evidence of a record of success in the industry pertinent to the products and/or services the client plans to offer in this particular self-employment venture;

b. the client must attend at least one workshop on small business development designed to develop and raise the management skills of small business owners. Acceptable workshops include those operated by the small business development centers (SBDC), chambers of commerce (SCORE), Louisiana Department of Economic Development, and colleges and universities;

c. the client must develop a business plan;

d. the business plan must:

i. be thorough, realistic, and in writing;

ii. include, but is not limited to:

(a). estimates of revenues and expenses;

(b). estimates of profit;

(c). a market analysis;

(d). client as the owner/proprietor of the business

actually working in/managing the business;

(e). evidence to indicate the business venture has

the potential to generate sufficient profits to provide client with gainful income to support client/family's daily living expenses and business costs;

e. available Social Security work incentives, such as PASS and IRWE, must be investigated, applied for, and used for clients who are recipients of Social Security Benefits (SSI and SSDI);

f. the client must:

i. submit the business plan to a small business development center for evaluation of the viability of the business venture in terms of competitive profitability;

ii. share with LRS the small business development center's evaluation of and comments regarding the business plan;

iii. make modifications to the business plan if such plan, or portions thereof, are rejected by the small business development center; and

iv. resubmit such plan for re-review by the small business development center;

g. LRS has defined the scope of the establishment of a small business enterprise as reasonable start-up costs not to exceed an aggregate assistance of \$20,000. The cost of any training/workshops relative to establishing the client in a small business and/or disability-related assistive technology devices is not included in the \$20,000 limit;

h. commitment by the client to make a minimum cash capital contribution of 20 percent of the total transaction. Such funds can be from the client's personal resources, loans, etc.

i. LRS will not assist a client in the establishment of multiple (more than one) small businesses. Once the initial business is set up, LRS will not provide funds for expansion or improvements to the business. If changes in the nature of the client's disability require disability-related modifications and/or assistive technology to enable the client to continue in this employment capacity, the individual must:

i. be an eligible client or eligible for post-employment services;

ii. complete an updated business plan;

iii. meet all other applicable policy/procedure regulations;

j. LRS will not provide funding for:

i. businesses that are speculative in nature, such as investments in real estate, etc.;

ii. businesses organized as nonprofit;

iii. businesses organized as hobbies;

iv. construction and/or purchase of real estate;

v. purchase of land;

vi. refinancing of existing debt;

vii. purchase of vehicles;

k. all other applicable state, federal, and agency laws, policy and procedure must be followed, including state purchasing laws;

l. these policy provisions do not apply to the Randolph Sheppard Program;

m. ultimate approval of funding a small business enterprise for an eligible vocational rehabilitation client lies with Louisiana Rehabilitation Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36477.

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

§119. Transition Process for Individuals in Secondary Education Programs

A. Louisiana Rehabilitation Services (LRS) will provide vocational rehabilitation transition services to eligible individuals in their exit year from the state secondary education system. Although the education system will be involved in education-related transition services prior to the exit year, LRS' first consultation with school personnel, students with disabilities, and family members of students with disabilities will be in the year prior to the exit year. This consultation in the year prior to the exit year will enable school personnel and LRS to identify those students who might be eligible for and interested in vocational rehabilitation services.

B. LRS' transition process is a coordinated set of vocational rehabilitation services planned for an eligible student with an official secondary education transition plan. Such vocational rehabilitation transition services are designed within an outcome-oriented process that promotes movement from school to post school activities, including post secondary education, vocational training and/or integrated employment (including supported employment).

C. LRS' vocational rehabilitation transition services shall be based upon the eligible student's individual needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, and the achievement of an employment outcome.

D. The coordination and collaboration between LRS and the state education system will assure continuity of services for eligible students.

E. The following provisions are the key points in LRS' transition process:

1. LRS will provide consultation (to the extent possible considering time and resources) the year prior to the individual's exit year with regard to students who have official transition plans within the state education system.

2. LRS will provide vocational rehabilitation transition services during the eligible individual's exit year to students who have official transition plans within the state education system. The provision of these vocational rehabilitation transition services will be assured through the completion of an eligible individual's IPE BEFORE the individual leaves the school system.

F. The LRS director or designee shall have the sole responsibility for any exceptions to this policy on transition services.

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), repromulgated LR 25:

§121. Conditions for Case Closure

A. Options for Closure. An individual's case can be closed at any time in the vocational rehabilitation process when it has been determined that:

1. the individual is not available for services;
2. the individual is ineligible;

3. appropriate planned services, expenditures and reports have been completed, and additional services are either unnecessary or inappropriate, except as may be provided under post-employment services.

B. Closure as Successfully Rehabilitated. An individual is determined to have achieved an employment outcome if the following requirements are met:

1. the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

2. the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice;

4. the individual has maintained the employment outcome for a period of at least 90 days;

5. the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

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 23:994 (August 1997), repromulgated LR 25:

Interested persons may submit written comments for 40 days from the date of this publication to May Nelson, Director, Louisiana Rehabilitation Services, 8225 Florida Boulevard, Baton Rouge, LA 70806-4834. Ms. Nelson is responsible for responding to inquiries regarding the proposed rule.

Public Hearings will be conducted at 10 a.m. on Tuesday, May 25, 1999, as follows: Baton Rouge, LRS Regional Office, 3651 Cedarcrest Avenue; New Orleans, UNO Campus, TRAC Bldg., Room 103; Shreveport, LRS Regional Office, 1525 Fairfield Avenue; Alexandria, LRS Regional Office, 900 Murray Street.

Individuals with disabilities who require special services should contact Judy Trahan, Program Manager, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For information or assistance, call 225-925-4131 or 1-800-737-2958, or for voice and TDD, 1-800-543-2099.

Madlyn B. Bagneris
Secretary

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

RULE TITLE: Vocational Rehabilitation Policy Manual

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

The \$1,028,434 savings is based on a five-year trend that 29% of the consumers receiving college, barber/beauty school, business school, trade/technical/nursing school, or other training meet LRS' economic needs test; and 36% of the total amount spent on consumers are for these services. The

\$1,028,434 is only 1/4 of the savings because this change will only affect new consumers.

However, this average will be offset by a projected increase in the purchase of assistive technology devices. Based on a 59% increase in costs from 1997 to 1998, the \$1,028,434 savings will be applied to the purchase of additional assistive technology devices.

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

There is no proposed increase or decrease in anticipated revenues.

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

Vocational Rehabilitation consumers will be affected by a decrease in the number of new applicants placed into Category II (significantly disabled) of the Order of Selection and a corresponding increase in the number of new applicants placed into Category III (non-significantly disabled) of the Order of Selection.

LRS will refer these individuals (Category III) for training services through the Workforce Development System and the states' TOPS program, as well as any other comparable services and similar benefits.

The cost to directly affected persons or non-governmental groups will be the savings LRS projects, \$1,028,434. The economic benefits will be the additional \$1,028,434 LRS will provide for assistive technology devices to eligible clients.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no projected impact on competition and employment in public or private sectors.

May Nelson
Director
9904#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the
State Employees' Retirement System**

**Deferred Retirement Option Plan (DROP)—Disbursement
(LAC 58.I.2713)**

Under the authority of LSA-R.S. 11:515 and in accordance with LSA-R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend LAC 58.I.2713. The proposed amendment to the rules changes the minimum distributions requirements from the Deferred Retirement Option Plan to comply with the Internal Revenue Code.

**Title 58
RETIREMENT**

Part I. State Employees' Retirement

Chapter 27. DROP Program

Subchapter C. Withdrawal

§2713. Time for Disbursement

A. The DROP account must be totally disbursed within the expected lifetime of the participant in accordance with federal laws. The expected lifetime is determined based on the age of the participant on the date of termination. All funds from the DROP account must be withdrawn in accordance with the following schedule:

Age at Termination	Age of Final Distribution
55 and under	75
56-60	77
61-66	80
67-70	81
71 and older	add 10 years to age

B. Disbursements from the DROP accounts shall be made on the sixth day of each month; if the sixth is a weekend or holiday, the disbursement shall be made on the following workday.

C. When a retiree reaches age 70½, mandatory monthly distributions shall begin in accordance with IRS regulations. The amount of the monthly distributions will be recalculated annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, Louisiana State Employees' Retirement System, 8401 United Plaza Boulevard, Room 145, Baton Rouge, Louisiana 70809 through May 30, 1999.

James O. Wood
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Deferred Retirement Option Plan (DROP)—
Time for Disbursement**

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

No implementation cost to the state or local governmental units are anticipated because of the proposed rules.

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

These regulations will have no impact on revenue collections of state or local governmental units.

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

There will be no economic impact on those persons who are required to withdraw their DROP funds in accordance with the Internal Revenue Code, and it will save them a 50% excise tax penalty for not making the withdrawal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition and employment.

James O. Wood
Executive Director
9904#004

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the
State Employees' Retirement System**

Trustee Election (LAC 58:I.301, 303, 501, and 503)

Under the authority of LSA R.S. 11:515 and in accordance with LSA R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend LAC 58:I.301, 303, 501 and 503. The proposed amendment to the rules changes the time period for the election of Trustees of the Board of Trustee of LASERS.

Title 58

RETIREMENT

Part I. State Employees' Retirement

Chapter 3. Election of Active Member Trustees

§301. General Schedule of Elections

B. The schedule for elections shall be as follows:

4. fourth Friday in September: the final day that information on candidates and ballots may be mailed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

§303. Election Rules

D. Ballots or election brochures shall be distributed or mailed by the fourth Friday in September. Every active contributing member appearing on the June Monthly Retirement Reports shall receive a ballot or election brochure for voting. Participants in the DROP program shall vote in the

active member's election and shall have ballots or election brochures mailed to their homes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

Chapter 5. Election of Retired Member Trustees

§501. General Schedule of Elections

B. The schedule for elections shall be as follows:

4. Fourth Friday in September: the final day that information on candidates and ballots may be mailed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

§503. Election Rules

D. Ballots or election brochures shall be distributed to each retired member by the fourth Friday in September. Every retiree member appearing on the June Retiree Master List shall receive a ballot or election brochure for voting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, Louisiana State Employees' Retirement System, 8401 United Plaza Boulevard, Room 145, Baton Rouge, Louisiana 70809 through May 30, 1999.

James O. Wood
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Trustee Election**

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

No implementation cost to the state or local governmental units are anticipated because of the proposed rules. The proposed rule merely changes the dates involved in the process for electing members of the Board of Trustees for the Louisiana State Employees' Retirement System.

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

These rules will have no impact on revenue collections of state or local governmental units.

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

No costs or economic benefits to directly affected persons are anticipated to result from the proposed amendment to these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not effect competition and employment.

James O. Wood
Executive Director
9904#005

H. Gordon Monk
Staff Director
Legislative Fiscal Office