

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Privately Owned Sewage Treatments  
(LAC 33:IX.2331, 2381, 2383, 2385,  
2769, and 2801-2809)(WP035E1)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under authority of R.S. 30:2011, the Secretary of the Department of Environmental Quality declares that an emergency action is necessary as a result of Act 399 of the 1999 Legislative Session, which required all privately-owned sewage treatment facilities, regulated by the Public Service Commission, to obtain financial security prior to receiving discharge authorization. This Act applies to any issuance, renewal, modification, or transfer of such permits after July 1, 1999, and mandates that the Department establish by rule the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. Therefore, after July 1, 1999, and until the necessary rule is in effect, the Department would be required to withhold all new discharge permits, renewal of existing, modification of existing, and transfers of existing discharge permits to all privately-owned, for-profit community sewage treatment facilities.

This is a renewal of Emergency Rule WP035E, adopted on July 1, 1999, and published in the *Louisiana Register* on July 20, 1999. The text of the July 1, 1999 rule has been revised.

The delays inherent in the normal rulemaking process would imperil public health, safety, and welfare by precluding the legal operation of some sewage treatment facilities subject to Act 399. The legal operation of those sewage treatment facilities is essential for the proper treatment of sewage, necessary to reduce disease-causing microorganisms and pollutants that are harmful to fish and other aquatic life. The cessation of operation of such a treatment facility, as would be required by law, would necessitate either bypassing the treatment facility (resulting in the discharge of untreated sewage) or blocking all flow of sewage through the collection system (rendering uninhabitable every building served by that system). The Department cannot ensure protection of public health, welfare, and the environment without the issuance of discharge permits with proper effluent limitations and monitoring requirements.

The immediate impact of this rule is to give effect to the terms and conditions of Act 399, thus allowing the Department to continue regulating treated sanitary discharges from private treatment facilities which serve large segments of Louisiana's population.

This emergency rule is effective October 29, 1999, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever comes first. For more information concerning WP035E1, you may contact the Regulation Development Section at (225) 765-0399. Adopted this 29th day of October, 1999.

### Title 33

### ENVIRONMENTAL QUALITY

### Part IX. Water Quality Regulations

### Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

### Subchapter B. Permit Application and Special LPDES Program Requirements

### §2331. Application for a Permit

\* \* \*

[See Prior Text in A - O. Editorial Note]

P. Additional Requirements for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately-owned sewage treatment facilities regulated by the Public Service Commission must also comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W. Following receipt of the permit application the administrative authority shall calculate and subsequently notify the applicant of the "waste discharge capacity per day" for the facility. The applicant will use this figure to determine the amount of the financial security required by LAC 33:IX.Chapter 23.Subchapter W. The applicant shall subsequently obtain and supply the department with the financial security document in accordance with LAC 33:IX.Chapter 23.Subchapter W. No permit shall be issued after July 1, 1999, without the required financial security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:

### Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination

### §2381. Transfer of Permits

\* \* \*

[See Prior Text in A - B.1]

2. the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;

3. the state administrative authority does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this Subsection may also be a minor modification under LAC 33:IX.2385. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in LAC 33:IX.2381.B.2; and

4. additional requirements are met for privately-owned sewage treatment facilities regulated by the Public Service Commission when transferred after July 1, 1999. The new permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

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

**§2383. Modification or Revocation and Reissuance of Permits**

\* \* \*

[See Prior Text in A - B.2]

C. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:

**§2385. Minor Modifications of Permits**

A. Upon the consent of the permittee, the state administrative authority may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of LAC 33:IX.Chapter 23.Subchapters E–G. Any permit modification not processed as a minor modification under this Section must be made for cause and with LAC 33:IX.Chapter 23.Subchapters E–G draft permit and public notice as required in LAC 33:IX.2383. Minor modifications may only:

1. correct typographical errors;
2. require more frequent monitoring or reporting by the permittee;
3. change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
4. allow for a change in ownership or operational control of a facility where the state administrative authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the state administrative authority. The new permittee of a privately-owned sewage treatment facility regulated by the Public Service Commission must additionally comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W.

\* \* \*

[See Prior Text in A. 5 - 7]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

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

**Subchapter V. Additional Requirements Applicable to the LPDES Program**

**§2769. Additional Requirements for Permit Renewal and Termination**

A. The following are causes, in addition to those found in LAC 33:IX.2387, for terminating a permit during its term or for denying a permit renewal:

\* \* \*

[See Prior Text in A.1]

2. due consideration of the facility's history of violations and compliance;
3. change of ownership or operational control (see LAC 33:IX.2381); and/or
4. failure to provide or maintain financial security in accordance with LAC 33:IX.Chapter 23.Subchapter W.

\* \* \*

[See Prior Text in B - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:

**Subchapter W. Financial Security**

**§2801. Applicability**

A. This Subsection shall be applicable to the following actions, for privately-owned sewage treatment facilities regulated by the Public Service Commission, when taken after July 1, 1999:

- 1. issuance of a new discharge permit;
- 2. renewal of an existing discharge permit;
- 3. modification of an existing discharge permit; and
- 4. transfer of an existing discharge permit to a different permittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:

**§2803. Acceptable Form of Financial Security**

A. Financial security required by R.S. 30:2075.2 may be established by any one or a combination of the following mechanisms:

1. Surety Bond. The requirements of this Section may be satisfied by obtaining a surety bond that conforms to the following requirements:

- a. the bond must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Management and Finance, Financial Services, Box 82231, Baton Rouge, LA 70884-2231;
- b. the bond must be executed by the permittee and a corporate surety licensed to do business in Louisiana. The surety must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and be approved by the administrative authority;
- c. under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond;
- d. under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority at the address indicated in Subsection A.1.a of this Section. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts; and
- e. the wording of the surety bond must be identical to the following, except that material in brackets is to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond was executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety: [name(s) and business address(es)]

[Site identification number, site name, facility name, facility permit number, facility address, amount for each facility guaranteed by this bond]

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and, for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq., to have a permit in order to discharge wastewater from the facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for the conditions specified in LAC 33:IX.Chapter 23.Subchapter W, as a condition of the permit; and

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform, in a timely manner, the requirements of LAC 33:IX applicable to the

facility for which this bond guarantees the requirements of LAC 33:IX, in accordance with the other requirements of the permit as such permit may be amended and pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide other financial assurance as specified in LAC 33:IX.Chapter 23.Subchapter W and obtain written approval of the administrative authority of such assurance within 90 days after the date of notice of cancellation of this bond is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the requirements of LAC 33:IX or of its permit, for the facility for which this bond guarantees performances of the requirements of LAC 33:IX.Chapter 23.Subchapter W, the Surety shall either perform the requirements of LAC 33:IX.Chapter 23.Subchapter W, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to permit, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed, beginning on the date that both the Principal and the administrative authority received the notice of cancellation as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the

wording specified in LAC 33:IX.2803.A.1, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

CORPORATE SURETY

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[For every cosurety, provide signature(s) and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

Letter of Credit. The requirements of this Section may be satisfied by obtaining a Letter of Credit that conforms to the following requirements:

a. the letter of credit must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Management and Finance, Financial Services, Box 82231, Baton Rouge, LA 70884-2231;

b. the issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency;

c. the letter of credit must be irrevocable and issued for a period of at least one year, unless at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority at the address indicated in Subsection A.2.a of this Section by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts; and the wording of the letter of credit shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE LETTER OF CREDIT

Secretary

Louisiana Department of Environmental Quality

Financial Services

Post Office Box 82231

Baton Rouge, Louisiana 70884-2231

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the conditions specified in LAC 33:IX.Chapter 23.Subchapter W for its [list site identification number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ \_\_\_\_\_ upon presentation of:

(1). A sight draft, bearing reference to the Letter of Credit No. \_\_\_\_\_ drawn by the administrative authority, together with;

(2). A statement, signed by the administrative authority, declaring that the amount of the draft is payable pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.2803.A.2, effective on the date shown immediately below.

[Signature(s) and title(s) of

official(s) of issuing

institution(s)]

[date]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:

**§2805. Amount of Required Financial Security**

A. The amount of the financial security must be equal to or greater than \$1 per gallon of wastewater discharge per day from the facility, as determined by the administrative authority, up to a maximum of \$25,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:

**§2807. Conditions for Forfeiture**

A. The secretary or his designee may enter an order requiring forfeiture of all or part of the financial security, if he determines that:

1. the continued operation or lack of operation and maintenance of the facility covered by this Subsection represents a threat to public health, welfare, or the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such determination includes, but is not limited to:

- a. the discharge of pollutants exceeding limitations imposed by applicable permits;
- b. failure to utilize or maintain adequate disinfection facilities;
- c. failure to correct overflows or backups from the collection system;
- d. a declaration of a public health emergency by the state health officer; and
- e. a determination by the Public Service Commission that the permittee is financially unable to properly operate or maintain the system;

2. reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and

3. it does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:

**§2809. Use of Proceeds**

The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system, as deemed necessary by the secretary under LAC 33:IX.2807.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:

J. Dale Givens  
Secretary

9911#008

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Division of Administration  
Board of Trustees of the State Employees  
Group Benefits Program**

Exclusive Provider Organization (EPO)—Plan of Benefits (LAC 32:V.601)

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees hereby invokes the Emergency Rule provisions of La R. S. 49:953(B)

The Board finds that it is necessary to amend the EPO Plan Document to modify the wellness benefits by providing such benefits for services billed by health care providers that have entered into contracts with the State Employees Group Benefits Program. Failure to adopt this rule on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, amending the definitions of *Well-Adult Care* and *Well-Child Care* in EPO Plan Document, is effective December 1, 1999, and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

**Title 32**  
**EMPLOYEE BENEFITS**  
**Part V. Exclusive Provider (EPO)—Plan of Benefits**

**§601. Definitions**

\* \* \*

*Well-Adult Care*—means a routine physical examination by a physician that may include an influenza vaccination, lab work and x-rays performed as part of the exam, and billed by a health care provider that has entered into a contract with the State Employees Group Benefits Program, with wellness procedure and diagnosis codes. All other health services coded with wellness procedures and diagnosis codes are excluded.

\* \* \*

*Well-Child Care*—means routine physical examinations, active immunizations, check-ups and office visits to a Physician, and billed by a health care provider that has entered into a contract with the State Employees Group Benefits Program, except for the Treatment and/or diagnosis of a specific illness, from age 1 to age 16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1820 (October 1999), amended LR 26:

A. Kip Wall  
Interim Chief Executive Officer

9911#045

**DECLARATION OF EMERGENCY**

**Office of the Governor**  
**Division of Administration**  
**Board of Trustees of the State Employees**  
**Group Benefits Program**

Penalty for Late Payment of Premiums

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, and in accordance with R.S. 42: 876 regarding collection and deposit of contributions, the Board of Trustees hereby invokes the Emergency Rule provisions of La R. S. 49:953(B).

The Board finds that it is necessary, in the implementation of its responsibility for collection of premium contributions, to provide for assessment of a late payment penalty to participating employers that fail to remit full payment of premiums by the due date. Failure to adopt this rule on an emergency basis will result in financial impact adversely

affecting the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule is effective January 1, 2000, and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

**Collection and Deposit of Contributions**

A. The Board shall be responsible for preparing and transmitting to each participating employer a monthly invoice premium statement delineating the enrolled employees of that agency, the class of coverage, total amount of employer and employees contributions due to the Board, and such other items as are deemed necessary by the Board.

B. It shall be the responsibility of the participating employer to reconcile the monthly invoice premium statement, collect employee contribution by payroll deduction or otherwise, and remit the reconciled monthly invoice premium statement and both the employer and employee contributions to the Board within thirty (30) days after receipt of the monthly premium invoice statement. Payments received by the Board shall be allocated as follows:

1. first, to any late payment penalty due by the participating employer;
2. second, to any balance due from prior invoices; and
3. third, to the amount due under the current invoice.

C. If any participating employer fails to remit, in full, both the employer and employee contributions to the Board within thirty (30) days after receipt of the monthly invoice premium statement, then:

1. at the request of the Board, the state treasurer shall withhold from state funds due the participating employer the full amount of the delinquent employer and employee contributions and remit this amount directly to the Board; and
2. the participating employer shall pay a penalty equal to one (1%) percent of the total amount due and unpaid, compounded monthly.

D. All employer and employee premium contributions for the payment of premiums for group benefits for state employees provided under the Board's authority shall be deposited directly with the Board. The Board shall pay all monies due for such benefits as they become due and payable.

A. Kip Wall  
Interim Chief Executive Officer

9911#046

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Division of Administration  
Board of Trustees of the State Employees  
Group Benefits Program**

Preferred Provider Organization (PPO)—Plan of Benefits (LAC 32:III.601)

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees hereby invokes the Emergency Rule provisions of La R. S. 49:953(B)

The Board finds that it is necessary to amend the PPO Plan Document to modify the wellness benefits by providing such benefits for services billed by health care providers that have entered into contracts with the State Employees Group Benefits Program. Failure to adopt this rule on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, amending the definitions of *Well-Adult Care* and *Well-Child Care* in PPO Plan Document, is effective December 1, 1999, and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

**Title 32  
EMPLOYEE BENEFITS**

**Part III. Preferred Provider Organization (PPO)—Plan of Benefits**

**Chapter 6. Definitions**

**§601. Definitions**

\* \* \*

*Well-Adult Care*—means a routine physical examination by a physician that may include an influenza vaccination, lab work and x-rays performed as part of the exam, and billed by a health care provider that has entered into a contract with the State Employees Group Benefits Program, with wellness procedure and diagnosis codes. All other health services coded with wellness procedures and diagnosis codes are excluded.

\* \* \*

*Well-Child Care*—means routine physical examinations, active immunizations, check-ups and office visits to a Physician, and billed by a health care provider that has

entered into a contract with the State Employees Group Benefits Program, except for the Treatment and/or diagnosis of a specific illness, from age 1 to age 16.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), amended LR 26:

A. Kip Wall  
Interim Chief Executive Officer

9911#044

## DECLARATION OF EMERGENCY

**Office of the Governor  
Division of Administration  
State Land Office**

Wax Lake Waterfowl Hunting Season—1999-2000

The Division of Administration, State Land Office, has adopted the following emergency rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., which emergency rule will be effective November 15, 1999 and remain in effect for 120 days or until finalized as a rule, whichever comes first.

Emergency adoption is necessary because of a dispute between the State of Louisiana and Miami Corporation over the ownership of water bottoms and accretion areas generally between the North end of Wax Lake and the mouth of Little Wax Bayou. Miami Corporation has previously granted hunting leases to various parties in this area; and the State previously posted signs in this area evidencing the State's claims, leading some members of the public to assume that the area was open to unlimited hunting and other access, including the right to construct permanent hunting blinds in the area. Problems exist with enforcement of trespass laws in that portion of the Wax Land area claimed by Miami Corporation and the State during duck hunting season, therefore both Miami Corporation and the State are united in their efforts to avoid any confrontation among armed hunters in this area, and deem it advisable to create a uniform set of rules for use of the area during the opening hunting season.

### Emergency Rule

Effective November 15, 1999 and therefore, the State Land Office adopts the following rules to govern use of the area of Wax Lake claimed by the State for hunting during the duration of the 1999-2000 waterfowl hunting season.

1. For purposes of these regulations, "Wax Lake Area" shall include lands and water bottoms within Sections 34, 35, 44, and 45, Township 16 South, Range 10 East, St. Mary Parish, said area generally lying between the north limit of Wax Lake and the mouth of Little Wax Bayou. The lands and water bottoms within the Wax Lake Area are subject to competing claims of the State and private landowners.

2. No one shall use marsh buggies within the Wax Lake Area. Air boats shall be allowed within the channel of Wax Lake Outlet only.

3. Certain improvements have been placed on the area by parties claiming through private landowners. Pending resolution of the title disputes between the State and those landowners, those improvements may remain in place, and any new permanent improvements shall be spaced a minimum of 500 feet from any existing or newly constructed improvements. All blinds, stands, or other improvements placed on the lands or water bottoms for use in hunting shall be removed upon termination of the legal hunting seasons. Other than such temporary hunting blinds as may be constructed for personal use, no party shall construct any buildings, levees, dams, fences, or other structures or facilities on the lands or water bottoms within the Wax Lake Area, nor dredge or dig any additional canals, ditches, or ponds thereon or otherwise change or alter the premises in any manner.

4. No member of the public is allowed to "stake a claim" to any particular location within areas owned or claimed by the State of Louisiana for any purpose. Construction of permanent blinds shall not give such party any right to exclude others.

Mark C. Drennen  
Commissioner of Administration

9911#005

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of Public Health**

#### **Sanitary Code—Commercial Body Art**

In accordance with the emergency provisions of R.S. 49:950 et seq. of the Administrative Procedure Act, and under authority of Act 393 of 1999 which enacted R.S. 40:2741 through 40:2744, the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, Sanitarian Services Section, Food and Drug Unit under the direction of the State Health Officer hereby declares that unregulated tattooing, body piercing, and permanent cosmetic procedures may pose a health hazard to consumers within the state of Louisiana.

These rules will be incorporated into the State Sanitary Code and will become Chapter XXVIII of that Code as provided for in R.S. 40:4. This chapter of the Sanitary Code establishes uniform rules for the operation of commercial body art facilities within the state. A commercial body art facility means any location, place, area, or business, whether permanent or temporary, which provides consumers access to personal service workers who for remuneration perform tattooing of the skin, body piercing or the application of permanent cosmetics to the skin. These rules do not apply to ear piercing with a disposable single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear. These rules do not apply to physicians licensed by the Louisiana State Board of Medical Examiners.

This declaration of emergency is being adopted effective December 1, 1999 and shall remain in effect for a maximum

of 120 days or until promulgation of the final Rule or which ever occurs first.

## Chapter XXVIII. Commercial Body Art Regulation

### 28:001. Definitions

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of the Sanitary Code are defined for the purposes thereof as follows:

*Antiseptic*—means an agent that destroys disease causing microorganisms on human skin or mucosa.

*Aftercare*—means written instructions given to the consumer, specific to the body art procedure(s) rendered, on caring for the body art and surrounding area. These instructions will include information when to seek medical treatment, if necessary.

*Body Art*—means the practice of physical body adornment by registered establishments and operators utilizing, but not limited to, the following techniques: tattooing, cosmetic tattooing, body piercing, branding and scarification. This definition does not include practices that are considered medical procedures by a state medical board, such as implants under the skin, and shall not be performed in a commercial body art facility. This definition does not include the piercing of the outer perimeter or lobe of the ear using pre-sterilized single use stud and clasp ear piercing system.

*Body Piercing*—means puncturing or penetration of the skin of a person using pre-sterilized single use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening, except puncturing the outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system shall not be included in this definition.

*Branding*—means inducing a pattern of scar tissue development by means of a heated instrument.

*Client*—means a consumer requesting the application of a tattoo, body piercing services or permanent cosmetic application services

*Commercial Body Art Facility*—as defined herein and in LSA-R.S. 40:2741 means any location, place, area, or business, whether permanent or temporary, which provides consumers access to personal services workers who for remuneration perform any of the following procedures:

a. tattooing or the insertion of pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, to produce an indelible mark or figure visible under the skin;

b. body piercing or the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration; but does not for the purposes of this Chapter, include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear;

c. the application of permanent cosmetics or pigments under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin, including but not limited to permanent eyeliner, eye shadow, or lip color.

*Contaminated Waste*—means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030 (latest edition), known as "Occupational Exposure to Bloodborne Pathogens."

*Consumer*—means any individual who is provided access to a commercial body art facility which is required to be registered pursuant to the provisions of this chapter.

*Disinfection*—means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

*Department*—means the Department of Health and Hospitals.

*Ear Piercing*—means the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system following manufacturers instructions.

*Equipment*—means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of a commercial body art facility.

*Hand Sink*—means a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms or other portions of the body.

*Invasive*—means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

*Jewelry*—means any personal ornament inserted into a newly pierced area, which must be made of surgical implant grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium or platinum, a dense, low-porosity plastic and which is free of nicks, scratches or irregular surfaces and which has been properly sterilized prior to use.

*Operator*—means any individual designated by the registrant to apply or to assist in the performance of body art procedures upon the consumer for remuneration. The term includes technicians who work under the operator and perform body art activities.

*Owner*—means any person who operates a commercial body art facility.

*Person*—means any natural person, partnership, corporation, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

*Protective Gloves*—means gloves made of vinyl or latex.

*Registrant*—means any person who is registered with the department as required by section 28:018 of this Chapter.

*Sanitize*—means to adequately treat equipment by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms without adversely affecting the equipment or its safety for the consumer.

*Sharps*—means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

*Sharps Container*—means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the international "biohazard" symbol.

*Single Use*—means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

*Sterilization*—means a very powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

*Tattooing*—means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing.

*Temporary Commercial Body Art Facility*—means any place or premise operating at a fixed location where an operator performs body art procedures for no more than 14 days consecutively in conjunction with a single event or celebration.

*Temporary Demonstration Registration*—means the registration issued by the Department to a *temporary commercial body art facility*, as defined herein, as required by Section 28:018 of this Chapter and R.S. 40:2742 for a period of time not to exceed fourteen consecutive calendar days.

*Temporary Operator Registration*—means the registration issued by the Department to an *operator*, as defined herein, to perform body art procedures at a temporary commercial body art facility approved and registered by the Department.

*Universal Precautions*—means a set of guidelines and controls, published by the Center for Disease Control (CDC) as "guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers" in *Morbidity and Mortality Weekly Report (MMWR)*, June 23, 1989, Vol. 38, No. S-6, and as "recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures," in *MMWR*, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

## **28:002. Facility Standards**

All commercial body art facilities shall meet the following criteria.

**28:002-1.** All areas shall be kept clean and in good repair.

**28:002-2.** All procedure surfaces, including counters, tables, equipment, chairs, or recliners, that are in treatment and sterilization areas shall be made of smooth, nonabsorbent, and nonporous materials.

**28:002-3.** All wall, floor, and ceiling surfaces within each procedure area shall be smooth, free of open holes or cracks, light colored, washable and in good repair. Walls, floors and ceilings shall be maintained in a clean condition.

**28:002-4.** Surfaces or blood spills shall be cleaned using an EPA registered, hospital-grade disinfectant.

**28:002-5.** Each facility shall provide a handwashing sink to be used solely for handwashing in body art procedure area for the exclusive use of the operator. Also, a separate instrument sink shall be provided for the sole purpose of cleaning instruments and equipment prior to sterilization in addition to the sink that is located in the restrooms. These sinks shall be provided with hot (120 degrees Fahrenheit minimum) and cold running water under pressure dispensed from a mixing valve. There shall also be available at all sinks and lavatories, powdered or liquid soap in a soap dispenser, disposable single use towels or automatic hand drying device, and a refuse container.

**28:002-6.** Toilet facilities shall be kept clean and in good repair and in working order at all times. If only one restroom is provided, it must contain a water closet and a handwashing sink equipped with a powdered or liquid soap dispenser and disposable single use towels or automatic hand drying device, as must all restrooms.

**28:002-7.** The facility shall be provided with adequate and sufficient artificial or natural lighting equivalent to at least twenty (20) foot candles three (3) feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

**28:002-8.** The facility shall be well ventilated with natural or mechanical methods that remove or exhaust fumes, vapors, or dust in order to prevent hazardous conditions from occurring or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

**28:002-9.** If a room used for any business purposes other than body art procedures is the same room or is adjacent to a room used for body art procedures, then the department may require that one or more of the following requirements be satisfied if there are conditions that the department considers a possible threat to the health of the employees, the customers, or the public:

a. a solid partition shall separate the premises used for other business purposes from the commercial body art area. The partition may contain a door, provided it remains closed except for entering and leaving;

b. a separate outside entrance shall be provided for the facility.

**28:002-10.** Pets or other animals shall not be permitted in the commercial body art facility. This prohibition shall not apply to trained guide animals for the disabled, sightless, or hearing impaired; or fish in aquariums.

**28:003. Required Equipment; Articles and Materials**

Commercial body art facility registrants and operators shall provide and maintain the following tattooing and/or piercing equipment and supplies at the place of business:

**28:003-1.** Tattoo machine or hand pieces, of non porous material which can be sanitized;

**28:003-2.** Stainless steel or carbon needles and needle bars;

**28:003-3.** Stainless steel, brass or lexan tubes that can be sanitized;

**28:003-4.** Stencils, plastic acetate or single use disposable carbon paper;

**28:003-5.** Sterilization bags with color strip indicator;

**28:003-6.** Disposable protective gloves;

**28:003-7.** Single use or disposable razors, tongue depressors, lubricants or medicines.

**28:003-8.** Single use towels, tissues or paper products;

**28:003-9.** Sharps container and BIOHAZARD waste bags;

**28:003-10.** Commercially purchased inks, dyes and pigments;

**28:003-11.** A trash receptacle(s).

**28:003-12.** Commercially available spore tests performed monthly.

**28:003-13.** Single-use hollow piercing stainless steel needles;

**28:003-14.** Approved equipment for cleaning and sterilizing instruments;

**28:003-15.** All tables or chairs made of nonporous material that can be cleaned and sanitized;

**28:003-16.** All piercing instruments shall be made of stainless steel.

**28:003-17.** Bleach or hard-surface disinfectants, or both;

**28:003-18.** Antibacterial hand soap; and

**28:003-19.** Minimum of 10 pre-sterilized needle/tube packs or 10 single use needle/tube packs per artist in respect to tattooist.

**28:004. Practice Standards; Restrictions**

**28:004-1.** Prior to any body art procedure, a consent form shall be completed and signed by each client. Aftercare instructions shall be given to the client both verbally and in writing after every service. The written care instructions shall advise the client to consult the body art operator at the first sign of inflammation/swelling or infection and when to seek medical attention.

**28:004-2.** Registrants may obtain advice from physicians regarding medical information needed to safeguard consumers and body art operators.

**28:004-3.** Registrants shall keep an individual written record of each client. That record shall include the name and address of the client; the date of each service; description of service; the color, manufacturer and lot number of each of each pigment used for each tattoo or permanent cosmetic procedure performed; special instructions; medical history or client conditions including:

- a. diabetes;
- b. allergies;
- c. cold sores and fever blisters;
- d. epilepsy;
- e. heart conditions;
- f. hemophilia;
- g. hepatitis;
- h. use of blood thinners;
- i. moles or freckles at the site of service;
- j. psoriasis or eczema;
- k. pregnancy or breast-feeding/nursing;
- l. scarring (keloid);
- m. other medical or skin conditions.

**28:004-4.** For permanent cosmetic procedures, operators shall take photographs for corrective procedures before and after the procedure and retain such photographs.

**28:004-5.** Records shall be kept for a minimum of three years.

**28:004-6.** Inks, dyes, or pigments shall be purchased from a commercial supplier or manufacturer. Products banned or restricted by the Food and Drug Administration shall not be used.

**28:004-7.** Registrants or operators shall not perform tattooing and body piercing for any of these individuals:

- a. on a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;
- b. on persons who show signs of intravenous drug use;
- c. on persons with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;
- f. on persons with psoriasis or eczema present in the treatment area;

e. on persons under 18 years of age without the presence, consent and proper identification of a parent, legal custodian parent or legal guardian as prescribed in R.S. 14:93.2 (A) and (B). Nothing in this section is intended to require an operator to perform any body art procedure on a person under 18 years of age with parental or guardian consent.

**28:004-8.** Use of a piercing gun to pierce shall be prohibited on all parts of the body, with the exception of the ear lobe.

**28:004-9.** Use of personal client jewelry or any apparatus or device presented by the client for use during the initial body piercing shall be sterilized prior to use. Each facility shall provide pre-sterilized jewelry, apparatus, or devices, which shall be of metallic content recognized as compatible with body piercing.

**28:004-10.** No person afflicted with an infectious or communicable disease that may be transmitted during the performance of body art procedures shall be permitted to work or train in a commercial body art facility.

**28:004-11.** No commercial body art facility shall require or permit an operator to knowingly work upon a person suffering from any infectious or communicable disease that may be transmitted during the performance of permanent color, tattoo application, or body piercing.

**28:004-12.** Nothing shall prohibit a commercial body art facility operator from refusing to provide services to anyone under the age of 18.

#### **28:005. Operator Training**

**28:005-1.** Each commercial body art facility registrant shall establish and maintain procedures to ensure that all operators performing tattooing, permanent cosmetic or body piercing services on the business premises have demonstrated knowledge of the following subjects: 1. Anatomy, 2. Skin diseases, disorders, and conditions (including diabetes); infectious disease control including waste disposal, hand washing techniques, sterilization equipment operation and methods, and sanitization/disinfection/sterilization methods and techniques; or facility safety and sanitation. Knowledge of the above subjects shall be demonstrated through submission of documentation of attendance and successful completion of training courses within the past year. Examples of courses approved by the Department includes, but are not limited to, such courses as Preventing Disease Transmission (American Red Cross) and Bloodborne Pathogen Training (US OSHA). Training/courses provided by professional body art organizations/associations or by equipment manufacturers may also be submitted to the department for approval. The attendance of a training course in Cardio Pulmonary Resuscitation (CPR) is also recommended for all facility staff.

**28:005-2.** Trainees may train under a registered owner or operator on the proper application of tattoos and/or body piercing procedures for a minimum of one year before they can apply for and receive their operator registration from the Department. However, this apprentice type training will not substitute for receiving of training from persons or facilities approved by the Department to provide the required training as prescribed in Section 28:005-1 of this Chapter. Commercial body art facility registrants and owners must only hire operators who have registered with the department and have received training as required in Subsections 28:005-1 and 28:005-2.

#### **28:006. Hand Washing and Protective Gloves**

**28:006-1.** Prior to and immediately following administering services to a client, all registrants and operators shall thoroughly wash their hands and nails in hot, running water with soap and rinse them in clear, warm water.

**28:006-2.** All registrants and operators shall wear protective gloves during services. Protective gloves shall be properly disposed of immediately following service.

**28:006-3.** Protective gloves will be changed during a procedure if the need of additional supplies are needed.

#### **28:007. Preparation and Aftercare of Treatment Area on Clients**

**28:007-1.** Body art operators shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing with an EPA-approved germicidal or antiseptic solution applied with a clean, single-use paper product, before placing the design on the client's skin or beginning tattooing or permanent cosmetic work.

**28:007-2.** If the area is to be shaved, the operator shall use a single-use disposable safety razor and then rewash the client's skin.

**28:007-3.** Substances applied to the client's skin to transfer the design from stencil or paper shall be single use.

**28:007-4.** Aftercare shall be administered to each client following service, as stated in sections 28:004-1 and 28:016-12 of this chapter.

#### **28:008. Cleaning Methods Prior to Sterilization**

**28:008-1.** Each operator shall clean all non-electrical instruments prior to sterilizing by brushing or swabbing to remove foreign material or debris, rinsing, and then performing either of the following steps:

a. immersing them in detergent and water in an ultrasonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or

b. submerging and soaking them in a protein-dissolving detergent or enzyme cleaner, followed by a thorough rinsing and wiping.

- 28:008-2.** For all electrical instruments, each operator shall perform the following:
- a. first remove all foreign matter; and
  - b. disinfect with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions.

**28:009. Instrument Sterilization Standards**

**28:009-1.** Commercial body art facility operators shall place cleaned instruments used in the practice of tattooing, permanent cosmetics or piercing in sterile bags, with color strip indicators, and shall sterilize the instruments by exposure to one cycle of an approved sterilizer, in accordance with the approved sterilization modes in section 28:010 of this chapter.

**28:009-2.** The provisions of this chapter shall not apply to electrical instruments.

**28:010. Approved Sterilization Modes**

**28:010-1.** Instruments used in the practice of commercial body art services shall be sterilized, using one of the following methods:

- a. in a steam or chemical autoclave sterilizer, registered and listed with the Federal Food and Drug Administration (FDA), and used, cleaned, and maintained according to manufacturer's directions; or
- b. with single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers.

**28:010-2.** Facility registrants and operators shall sterilize all piercing instruments that have or may come in direct contact with a client's skin or be exposed to blood or body fluids. Piercing needles shall not be reused. All piercing needles shall be single use.

**28:010-3.** All sterilizing devices shall be tested on a monthly basis for functionality and thorough sterilization by use of the following means:

- a. chemical indicators that change color, to assure sufficient temperature and proper functioning of equipment during the sterilization cycle; and
- b. a biological monitoring system using commercially prepared spores, to assure that all microorganisms have been destroyed and sterilization has been achieved. This testing shall be performed on a monthly basis for tattoo and body piercing facilities.

**28:010-4.** Sterilization device test results shall be made available at the facility at all times for inspection by the state health officer for a minimum of three years.

**28:011. Waste Receptacles**

**28:011-1.** Following body art procedures for each client, the registrant or operator shall deposit all waste material related to treatment in a container of the type specified in Section 28:011-3 of this Chapter.

**28:011-2.** Waste disposed in a reception area and restrooms shall be limited only to materials that are not used in providing body art services to clients or are practice related.

**28:011-3.** Waste disposal containers shall be constructed of non-absorbent and readily cleanable materials, shall have smooth surfaces and shall be kept clean and in good repair.

**28:012. Linens**

**28:012-1.** Each registrant or operator shall use clean linens for each client.

**28:012-2.** A common towel shall be prohibited.

**28:012-3.** Air blowers may be substituted for hand towels.

**28:012-4.** Each registrant or operator shall store clean linens, tissues, or single-use paper products in a clean, enclosed storage area until needed for immediate use.

**28:012-5.** Each registrant or operator shall dispose of or store used linens in a closed or covered container until laundered.

**28:012-6.** Each registrant or operator shall launder used linens either by a regular, commercial laundering or by a noncommercial laundering process that includes immersion in water at 160 degrees Fahrenheit for-not less than 15 minutes during the washing and rinsing operations.

**28:013. Clean Instruments and Products Storage**

**28:013-1.** Before use, disposable products that come in contact with the areas to be treated shall be stored in clean containers that can be closed between treatments.

**28:013-2.** Clean, sterilized reusable instruments that come in contact with the areas to be treated shall be packed in self-sealing sterilization packages and stored in clean, dry covered containers.

**28:013-3.** Clean, sterilized reusable transfer instruments, including forceps, trays, and tweezers, shall be packed in self-sealing sterilization packages and stored in clean, dry covered containers.

**28:014. Chemical Storage**

**28:014-1.** Each registrant or operator shall store chemicals in labeled, closed containers in an enclosed storage area. All bottles containing poisonous or caustic substances shall be additionally and distinctly marked as such and shall be stored in an area not open to the public.

**28:015. Handling Disposable Materials**

**28:015-1.** All potentially infectious waste materials shall be handled, stored and disposed of in a manner specified in Chapter 27, Section 27:022 of the State Sanitary Code.

**28:015-2.** Each registrant or operator shall dispose of disposable materials coming into contact with blood, body fluids, or both, in a sealable plastic bag that is separate from sealable trash or garbage liners or in a manner that protects not only the registrant or operators and the client, but also others who may come into contact with the material, including sanitation workers.

**28:015-3.** Disposable, sharp objects that come in contact with blood or body fluids shall be disposed of in a sealable, rigid, puncture-proof container that is strong enough to protect the registrant or operators, clients, and others from accidental cuts or puncture wounds that could happen during the disposal process.

**28:015-4.** Registrants or operators shall have both sealable plastic bags or sealable rigid containers available at the facility.

**28:015-5.** Each registrant or operator shall follow universal precautions in all cases.

**28:016. Tattoo and Permanent Cosmetic Procedures; Preparation and Aftercare**

**28:016-1.** During preparation, performance of service, and aftercare phases all substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Use of a spray bottle to apply liquid to skin is acceptable. Single use tubes or containers and applicators shall be discarded following tattoo service.

**28:016-2.** The client's skin shall be cleansed, excluding the areas surrounding the eyes, by washing with a Food and Drug Administration (FDA) germicidal or antiseptic solution applied with a clean single-use paper product before placing the design on the client's skin or beginning tattooing work.

**28:016-3.** If the area is to be shaved, the operator shall use a single use disposable safety razor and then rewash client's skin.

**28:016-4.** Substances applied to client's skin to transfer design from stencil or paper shall be single use. Paper stencils and skin scribes shall be single-use and disposed of immediately following service.

**28:016-5.** Body pencils used during a tattoo and permanent cosmetic service shall have the tip removed, the body and tip of the pen disinfected, and the tip sharpened to remove exposed edge after use on a client and prior to use on another client.

**28:016-6.** The plastic or acetate stencil used to transfer the design to the client's skin shall be thoroughly cleansed and rinsed in an Environmental Protection Agency (EPA) approved high-level disinfectant according to the manufacturers instructions and then dried with a clean single-use paper product.

**28:016-7.** Individual portions of inks, dyes, or pigments dispensed from containers or bottles into single-use containers shall be used for each client. Any remaining unused ink, dye or pigments shall be discarded immediately following service and shall not be re-used on another client.

**28:016-8.** Excess ink, dye, or pigment applied to the client's skin shall be removed with clean single-use paper product.

**28:016-9.** Use of styptic pencils or alum solids to check any blood flow is prohibited.

**28:016-10.** Upon completion of tattooing, the operator shall cleanse the skin, excluding the area surrounding the eyes, with a clean, single-use paper product saturated with an EPA-approved germicidal or antiseptic solution.

**28:016-11.** A sanitary covering shall be placed over designs and adhered to the skin with suitable skin tape.

**28:016-12.** Each operator shall provide aftercare, which shall consist of both verbal and written instructions concerning proper care of the tattooed skin. Instructions shall specify the following information:

- a. care following the procedure;
- b. advise clients to contact their physician or the operator who applied the tattoo or permanent cosmetics at the first sign of swelling or apparent infection; and
- c. restrictions.

**28:017.** Body piercing procedures: Body piercing operators shall be responsible for adhering to the following standards while serving clients in the commercial body art facility.

**28:017-1.** Each operator shall observe and follow thorough hand washing procedures with soap and water or an equivalent hand washing product before and after serving each client and as needed to prevent cross contamination or transmission of body fluids, infections or exposure to service-related wastes or chemicals.

**28:017-2.** Each operator shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing it with an FDA registered antiseptic solution applied with a clean, single-use paper product before and after piercing the client's skin.

**28:017-3.** All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single use swabs, applicators, lubricants, cups, skin scribes or marking instruments shall be discarded following the piercing service.

**28:017-4.** Any type of marking pen used by the operator shall be applied on cleansed skin only or shall be a surgical marking pen sanitized by design, including alcohol-based ink pens. The operator shall remove the tip of each body pencil used during a piercing, shall disinfect the body and the tip of the pencil, and shall sharpen the tip to remove the exposed edge prior to disinfection.

**28:017-5.** Use of styptic pencils or alum solids to control blood flow shall be prohibited.

**28:017-6.** Aftercare shall be administered to each client following service. Aftercare shall consist of both verbal and written instructions concerning proper care of the pierced area. Instructions shall specify the following information:

- a. care following service;
- b. advise clients to contact their physician or the operator who performed the piercing procedure at the first sign of swelling or apparent infection; and
- c. restrictions.

**28:017-7.** Operators who have open sores or bleeding lesions on their hands shall not have client contact until the lesions have healed to the scab phase. Each operator shall cover them with protective gloves or impervious bandages prior to contact with clients.

**28:017-8.** Operators shall wear eye goggles, shields, or masks if spattering is likely to occur while providing services.

**28:018. Registration**

**28:018-1.** Each person owning or operating a commercial body art facility or facilities within the State of Louisiana on January 1, 2000 shall register each facility with the department no later than March 1, 2000.

**28:018-2.** Each person acquiring or establishing a commercial body art facility within the State of Louisiana after January 1, 2000, shall register the facility with the department prior to beginning operation of such a facility.

**28:018-3.** No person shall operate a commercial body art facility without first having registered that facility as provided by Subsections 28:018-1 and 28:018-2 of this section. The application for registration of commercial body art facilities shall be submitted on forms provided by the department and shall contain all the information required by such forms and any accompanying instructions.

**28:018-4.** Each person managing a commercial body art facility and each person acting as an operator as defined in Section 28:001 of this Chapter on January 1, 2000, shall register with the department no later than March 1, 2000.

**28:018-5.** Each person who begins to act as a manager or operator in a commercial body art facility after January 1, 2000, shall register the facility as required in this Chapter prior to beginning operation of such a facility.

**28:018-6.** No person shall act as a manager or operator in a commercial body art facility without having first registered as provided in Subsections 28:018-4 and 28:018-5 of this section. The applications for registration shall be submitted on forms provided by the department and shall contain all of the information required by such forms and any accompanying instructions.

**28:018-7.** Any person or facility approved by the department for training commercial body art operators pursuant to R.S. 37:2743(A)(4) shall register with the department upon approval. The applications for registration shall be submitted on forms provided by the department and shall contain all of the information required by such forms and any accompanying instructions.

**28:018-8.** As part of the application for registration process, owners of commercial body art facilities shall submit a scale drawing and floor plan of the proposed establishment to the department for a review. This shall apply to new construction and to renovation of any existing property.

**28:019. Registration Application Form**

**28:019-1.** The department shall require at least the following information for registration:

- a. name, physical address, mailing address and telephone number and normal business hours of each commercial body art facility;
- b. name, residence address, mailing address and telephone number of the owner of each commercial body art facility;
- c. for each manager or operator: name, residence address, mailing address, telephone number, place(s) of employment as a manger or operator, training and/or experience, proof of attendance of an approved operator training course as specified in Section 28:005 of this chapter;

d. name, mailing address, telephone number and owner, manager or contact person for each operator training facility.

**28:020. Registration Fees**

**28:020-1.** The following fees shall accompany each application for initial registration:

Registrant	Fee
Owner of facility	\$500.00
Manager of facility	\$100.00
Operator	\$50.00
Training Facility or Person	\$1,500.00

Make check or money orders payable to the Department of Health and Hospitals.

**28:021. Issuance of Certificate of Registration**

**28:021-1.** A certificate of registration shall be issued upon receipt of an application and the required registration fee provided that no certificate of registration will be issued until an inspection has been made of the commercial body art facility and it has been found to be operating in compliance with the provisions of R.S. 40:2741 through 40:2744 and the provisions of this Chapter of the Sanitary Code.

**28:021-2.** Certificates of registration shall be displayed in an open public area of the commercial body art facility.

**28:021-3.** Certificates of registration shall expire annually on December 31.

**28:021-4.** Certificates of registration shall be issued only to the applicants and shall not be transferable.

**28:022. Renewal of Certificate of Registration**

**28:022-1.** Each registrant shall file applications for renewal of certificate of registration annually on forms provided by the department. The renewal application shall be forwarded to the mailing address of the registrant as listed on the last application for registration submitted to the department.

**28:022-2.** The following fees shall accompany each application for registration renewal:

Registrant	Renewal Fee
Owner of facility	\$250.00
Manager of facility	\$75.00
Operator	\$30.00
Training Facility or Person	\$500.00

Make check or money orders payable to the Department of Health and Hospitals.

**28:022-3.** Provided that a registrant files a required application with the department in proper form not less than thirty (30) days prior to the expiration date stated on the certificate of registration, the certificate shall not expire pending final action on the application by the department.

**28:023. Temporary Commercial Body Art Facility/Operator Registration**

**28:023-1.** Temporary commercial body art facilities and, when required, operator registrations may be issued for body art services provided outside of the physical site of a registered permanent facility for the purposes of product demonstration, industry trade shows or for educational reasons.

**28:023-2.** Temporary commercial body art facility and/or operator registrations will not be issued unless:

- a. the applicant furnishes proof of compliance with Section 28:018 of this Chapter relating to operator's registration;
- b. the applicant is currently affiliated with a permanent fixed location or permanent facility which, is registered by the department;
- c. applicants who reside outside of Louisiana must demonstrate to the department that they hold a valid registration or license to operate a commercial body art facility at a permanent fixed location issued by the state or local regulatory authority within their respective state;
- d. the temporary site complies with Section 28:025 of this Chapter.

**28:023-3.** In lieu of attendance at a bloodborne pathogens training program approved by the Department within the past year as specified in Section 28:005 of this Chapter, the applicant may furnish proof of attendance at equivalent training which is acceptable to the Department.

**28:023-4.** Temporary registrations expire after fourteen (14) consecutive calendar days or at the conclusion of the special event, whichever is less.

**28:023-5.** Temporary commercial body art facility and/or operator registrations will not be issued unless the applicant has paid a reasonable fee as set by the Department.

**28:023-6.** The temporary commercial body art facility and/or operator registration(s) shall not be transferable from one place or person to another.

**28:023-7.** The temporary commercial body art facility and/or operator registrations shall be posted in a prominent and conspicuous area where they may be readily seen by clients.

**28:024. Temporary Commercial Body Art Facility/Operator Registration Requirements**

**28:024-1.** A temporary registration may be issued by the Department for educational, trade show or product demonstration purposes only. The registration may not exceed fourteen (14) calendar days.

**28:024-2.** A person who wishes to obtain a temporary demonstration registration must submit the request in writing for review by the Department, at least thirty (30) days prior to the event. The request should specify:

- a. the purpose for which the registration is requested;
- b. the period of time during which the registration is needed (not to exceed fourteen (14) consecutive calendar days per event), without re-application;
- c. the fulfillment of operator requirements as specified in Section 28:005 of this Chapter;
- d. the location where the temporary demonstration registration will be used.

**28:024-3.** The applicant's demonstration project must be contained in a completely enclosed, non-mobile facility (e.g. inside a permanent building).

**28:024-4.** Compliance with all of the requirements of this Code, including but not limited to:

a. conveniently located handwashing facilities with liquid soap, paper towels and hot and cold water under adequate pressure shall be provided. Drainage in accordance with local plumbing codes is to be provided. Antiseptic single use hand wipes, approved by the Department, to augment the handwashing requirements of this section must be made readily available to each operator;

- b. a minimum of eighty (80) square feet of floor space;
- c. at least one hundred (100) foot candles of light at the level where the body art procedure is being performed;
- d. facilities to properly sterilize instruments- evidence of spore test performed on sterilization equipment thirty (30) days or less prior to the date of the event, must be provided; or only single use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed;
- e. ability to properly clean and sanitize the area used for body art procedures.

**28:024-5.** The facility where the temporary demonstration registration is needed must be inspected by the Department and a certificate of registration issued prior to any body art procedures being performed.

**28:024-6.** Temporary demonstration registrations issued under the provisions of Section 28:024-5 of this Chapter may be suspended by the Department for failure of the holder to comply with the requirements of this Chapter.

**28:024-7.** All temporary demonstration registrations and the disclosure notice must be readily seen by clients.

**28:025. Report of Changes**

**28:025-1.** The registrant shall notify the department in writing before making any change which would render the information contained in the application for registration inaccurate. Notification of changes shall include information required Section 28:018 of this Chapter.

**28:026. Transfer of Registrations**

**28:026-1.** Certificates of registration issued to commercial body art facilities, facility managers, body art operators and operator trainers shall not be transferrable.

**28:027. Enforcement**

**28:027-1.** The Office of Public Health shall enforce the provisions of this Chapter in accordance with Chapter I of this Code.

**28:028. Facility Inspections**

**28:028-1.** The department shall conduct at least one inspection of a commercial body art facility prior to approving the business to offer body art application services under provisions of this Chapter and R.S. 40:2741 through 2744. The department may conduct additional inspections as necessary for the approval process, and may inspect a registered commercial body art facility at any time the department considers necessary.

**28:028-2.** In an inspection, the department shall be given access to the business' premises and to all records relevant to the inspection.

**28:029. Suspension or Revocation of Approval**

**28:029-1.** The department may suspend or revoke the approval and registration of a commercial body art facility at any time the department determines that the business is being operated in violation of the provisions of R.S. 40:2714 through 2744, or the provisions of R.S. 14:93.2, which prohibits the tattooing and body piercing of minors without parental or custodial consent.

**28:029-2.** In addition to suspension or revocation of approval and registration by the department, if a commercial body art facility violates the provisions of R.S. 14:93.2, it shall be subject to the penalties provided therein.

**28:029-3.** The department may suspend or revoke the registration of a manager or operator at a commercial body art facility or the registration of a registered training facility at any time the department determines that the registrant is operating in violation of the provisions of R.S. 40:2714 through 2744 or the provisions of R.S. 14:93.

**28:029-4.** In addition to suspension or revocation of registration by the department, a registrant who violates the provisions of R.S. 14:93.2 shall be subject to the penalties provided therein.

**28:029-5.** The department may suspend or revoke the approval and registration of a commercial body art facility for any of the following reasons:

- a. failure to pay a registration fee or an annual registration renewal fee;
- b. the applicant obtained or attempted to obtain an approval or registration by fraud or deception;
- c. a violation of any of the provisions of this Chapter of the State Sanitary Code.

**28:030. Injunctive Relief**

**28:030-1.** If the department or state health officer finds that a person has violated, is violating, or threatening to violate the provisions of R.S. 40:2714 through 2744 or the provisions of this Chapter of the Sanitary Code and that violation or threat of violation creates an immediate threat to the health and safety of the public, the department or state health officer may petition the district court for a temporary restraining order to restrain the violation or threat of violation. If a person has violated, is violating, or threatening to violate provisions of R.S. 40:2714 through 2744 or the provisions of this Chapter of the Sanitary Code, the department or state health officer may, after sending notice of said alleged violation to the alleged violator via certified mail and the lapse of ten days following receipt of the notice by the alleged violator may petition the district court for an injunction to prohibit the person from continuing the violation or threat of violation.

**28:030-2.** On application for injunctive relief and a finding that a person is violating or threatening to violate provisions of R.S. 40:2714 through 2744 or the provisions of this Chapter of the Sanitary Code, the district court may grant any injunctive relief warranted by the facts. Venue for a suit brought under provisions of this section shall be in the parish in which the violation is alleged to have occurred.

**28:031. Severability**

See State Sanitary Code, Chapter 1, Section 1:006.

\* \* \*

AUTHORITY NOTE: Promulgated under authority of R.S. 40:2741 through R.S. 40:2744 – Commercial Body Art Regulation Act; R.S. 40:4 and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 26:

David W. Hood  
Secretary

## DECLARATION OF EMERGENCY

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

#### Prospective Reimbursement Methodology for Nursing Facilities

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is adopted in accordance with the Administrative Procedure Act, R. S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage under the Medicaid Program for private nursing facility services. Payments for nursing facility services are made in accordance with the prospective reimbursement methodology adopted effective August 1, 1984 (*Louisiana Register*, Volume 10, No. 6). A rule was subsequently adopted to establish patient specific classifications of care in accordance with requirements of the Omnibus Budget Reconciliation Act (OBRA) of 1987 (*Louisiana Register*, Volume 16, No. 12). Subsequent rules were adopted to establish specialized nursing facility levels of care for specific types of patients in skilled nursing units such as Skilled Nursing/Infectious Disease (SN/ID) and Skilled Nursing/Technology Dependent Care (SN/TDC). The payment for SN/ID and SN/TDC was established as a cost-based reimbursement methodology (*Louisiana Register*, Volume 14, Number 12 and Volume 15, Number 11). The Bureau has decided that it is necessary to amend the December 20, 1988 and November 20, 1989 rules to convert the reimbursement methodology from a cost-based to a prospective methodology for SN/ID and SN/TDC services.

This action is necessary to ensure health and welfare of Medicaid recipients by assuring continued access for specialized levels of care for skilled nursing services. It is estimated that the implementation of this rule will increase expenditures by approximately \$492,081 in state fiscal year 1999.

#### Emergency Rule

Effective October 21, 1999 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will reimburse nursing facilities for Skilled Nursing-Infectious Disease (SN/ID) and Skilled Nursing-Technology Dependent Care (SN/TDC) services under a prospective reimbursement methodology. This methodology utilizes the skilled nursing (SN) rate based on the 1993 cost report inflated to the applicable rate year, plus an average allowable cost per day. The allowable cost per day is determined through the Department's audit process in accordance with allowable cost guidelines for SN/ID and SN/TDC and based on audited cost reports for calendar year 1997 for the provision of these services plus a five percent (5 percent) incentive factor inflated to the midpoint of the year preceding the rate year.

A. Reimbursement Methodology. Reimbursement for SN/ID and SN/TDC services shall be limited to the same rates paid for skilled nursing level of care plus a prospective statewide enhancement to ensure reasonable access to appropriate services. The enhancement shall be based on average allowable incremental costs of all acceptable cost reports for the year on which the rates are based and in accordance with guidelines for allowable incremental costs and inflated forward to reflect current costs. In addition, the following requirements must be met:

1. the facility must have a valid Title XIX provider agreement for provision of nursing facility services;
2. the facility must be licensed to provide nursing services; and
3. the facility must have entered into a separate contractual agreement with the Bureau to provide SN/ID and/or SN/TDC services in accordance with standards for the care of individuals with infectious diseases or technological dependency and meet all applicable staffing and services requirements.

B. Allowable incremental costs for SN/ID:

1. Direct nursing costs are based on demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/ID services. Nursing services personnel includes head/charge nurse, registered nurses (RNs), licensed practical nurses (LPNs), nurse assistants, and orderlies. These costs exclude administrative nursing costs not directly related to patient care.

- a. A minimum of 4.0 nursing hours per patient day for infectious disease residents is required. However, HCFA does not grant exceptions that include direct patient care in excess of 9.6 hours per patient day.

- b. The marginal portion of demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/ID services in excess of nursing requirements for routine skilled nursing services will be allowed as SN/ID cost.

2. Other direct care services are based on demonstrated appropriate services including the following:

- a. respiratory therapy, social services or any other specialized services that are directly attributable to SN/ID status and not covered in the SN rate;

- b. specialized nursing supplies related to SN/ID status must be supported by detailed justification that substantiate the cost of any specialized nursing supplies;

c. specialized dietary needs related to SN/ID status must be supported by detailed justification that to substantiate the cost of any specialized dietary needs.

3. Plant and maintenance costs are based on demonstrated dependency of SN/ID special equipment. Capitalized purchases are not included. Costs associated with demonstrated enhanced infection control measures are included. Capitalized purchases are not included.

4. Allocated costs are based on the ratio of direct nursing hours required for SN/ID service not covered in the regular skilled rate (1.4 hours per resident day) related to total facility direct nursing hours. The following costs are allocated: administrative, general, nursing administration, housekeeping, medical supplies and dietary.

5. Incentive factor is equal to 5 percent of the average allowable incremental costs added to the enhanced rate in order to assure reasonable access to SN/ID services.

C. Allowable incremental costs for SN/TDC:

1. Direct nursing costs are based on demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/TDC services. Nursing service personnel includes head/charge nurse, registered nurses (RNs), licensed practical nurses (LPNs), nurse assistants, and orderlies. These costs exclude administrative nursing costs not directly related to patient care.

a. A minimum of 4.5 nursing hours per patient day for technology dependent care residents is required. However, HCFA does not grant exceptions that include direct patient care in excess of 9.6 hours per patient day;

b. The marginal portion of demonstrated salary and related benefits cost of nursing service personnel directly related to providing SN/TDC services in excess of nursing requirements for routine skilled nursing services will be allowed as SN/TDC cost.

2. Other direct care services are based on demonstrated appropriate services including the following:

a. respiratory therapy, social services or any other specialized services that are directly attributable to SN/TDC status and not covered in the SN rate;

b. specialized nursing supplies related to SN/TDC status must be supported by detailed justification that substantiate the cost of any specialized nursing supplies;

c. specialized dietary needs related to SN/TDC status must be supported by detailed justification that substantiate the cost of any specialized dietary needs.

3. Plant and maintenance costs are based on demonstrated dependency of SN/TDC special equipment. Capitalized purchases are not included.

4. Allocated costs are based on the ratio of direct nursing hours required for SN/TDC service not covered in the regular skilled rate (1.9 hours per resident day) related to total facility direct nursing hours. The following costs are allocated: administrative, general, nursing administration, housekeeping, medical supplies and dietary.

5. Incentive factor is equal to 5 percent of the average allowable incremental costs added to the enhanced rate, in order to assure reasonable access to SN/TDC services.

Facilities shall submit cost reports at the end of each twelve (12) month period. Providers shall be required to segregate SN/ID or SN/TDC costs from other long term care costs and to submit a separate cost report which shall be subject to audit. No duplication of costs shall be allowed and allowable costs shall be in accordance with Medicare cost principles.

Rates for SN/ID and SN/TDC services will be rebased as determined necessary by the Department to ensure that appropriate services are reimbursed on a reasonable cost basis, recognizing the need for accountability for public funds, as well as the provider's right to a fair payment for services rendered. Base rate adjustments will result in a new base rate component which will be used to calculate the rate for subsequent years. A base rate adjustment may be made when the event, or events, causing the adjustment is not one that would be reflected in inflationary indices.

Annual inflationary adjustments shall be contingent upon appropriation by the Legislature.

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

David W. Hood  
Secretary

9911#026

## DECLARATION OF EMERGENCY

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

#### Targeted Case Management Services— Nurse Home Visits for First Time Mothers

The Department of Health and Hospitals, Bureau of Health Services Financing adopts the following emergency rule under the Administrative Procedure Act, R.S. 49:950 et seq., and it shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule in July of 1999 restructuring targeted case management services under the Medicaid Program in order to enhance the quality of services and assure statewide access to services (*Louisiana Register*, Vol. 25, No.7). The Department now proposes to amend the July 1999 rule to extend the provision of case management services to a new targeted population of Medicaid recipients. The new targeted population shall be composed of first time mothers who reside in the Department of Health and Hospitals (DHH) designated regions of Lafayette (4) and Monroe (8). DHH administrative Region 4 consists of Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin and Vermillion parishes. DHH administrative Region 8 consists of Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Quachita, Richland, Tensas, Union, and West Carroll parishes. In addition, the staffing qualifications contained in the July 1999 rule are being amended to include specific requirements for case management agencies serving the new targeted population. The standards for participation are also being amended to include a new provider enrollment requirement applicable to all new case management agencies.

This action is necessary to protect the health and welfare of the Medicaid recipients in the targeted population group by providing access to case management services that encourage early prenatal care and reduces infant mortality. It is anticipated that the implementation of this emergency rule will increase expenditures by approximately \$1,141,440 for state fiscal year 1999-2000.

#### Emergency Rule

Effective for dates of services on or after November 21, 1999, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the July 1999 rule governing case management services to include a new targeted population of Medicaid recipients. The new targeted population shall be first time mothers who reside in the Department of Health and Hospitals (DHH) designated administrative regions of Lafayette (4) and Monroe (8). Providers of Nurse Home Visits for First Time Mothers case management must provide home visit services for eligible recipients in all parishes of the Lafayette and Monroe regions.

#### I. Eligibility Criteria

A Medicaid recipient must not be beyond the 28<sup>th</sup> week of pregnancy and must attest she meets one of the following definitions of a first-time mother in order to receive Nurse Home Visits of case management services:

- A. is expecting her first live birth, has never parented a child and plans on parenting this child; or
- B. is expecting her first live birth, has never parented a child and is contemplating placing the child for adoption; or
- C. has been pregnant, but has not delivered a child because of an abortion or miscarriage; or
- D. is expecting her first live birth, but has parented stepchildren or younger siblings; or
- E. had previously delivered a child, but her parental rights were legally terminated within the first six months of that child's life; or
- F. has delivered a child, but the child died within the first six months of life.

A physician's statement, medical records, legal documents, or birth and death certificates will be required as verification of first-time mother status.

After the birth of the child, the focus of Nurse Home Visit for First-Time Mothers case management is transferred from the mother to the child and services may continue until the child's second birthday. However, recipients may not receive more than one type of Medicaid funded case management at a time. A complete reassessment and a update of the comprehensive plan of care must be completed to incorporate the needs of the child within six (6) weeks of the delivery and 30 days prior to the child's first birthday. If during the reassessment it is determined that the child qualifies for CHILDNET and Infants and Toddler's case management, the Nurse Home Visit case manager shall transfer the child to the Infant and Toddler Program.

#### II. Staffing Qualifications

Case managers and supervisors providing services to this targeted population must meet the following educational qualifications: possession of a license or temporary permit to practice professional nursing in the State of Louisiana, certification of training in the David Olds Prenatal and Early Childhood Nurses Home Visit Model and the supervisor must have one year of professional nursing experience. A master's degree in nursing or public health may be substituted for the required one year of professional nursing experience for the supervisor.

#### III. Standards for Participation

All new providers interested in enrolling to provide Medicaid case management services must submit a written request to the Division of Home and Community Based Waiver Services (DHCBWS) identifying the case management population and the region they wish to serve. A new provider must attend a Provider Enrollment Orientation prior to obtaining a provider enrollment packet. The Bureau will offer orientation sessions at least twice per year. Enrollment packets will only be accepted for service delivery in those DHH regions that currently have open enrollment for case management agencies interested in serving certain targeted populations.

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

David W. Hood  
Secretary

9911#064

## **DECLARATION OF EMERGENCY**

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

Targeted Case Management Services and  
Targeted EPSDT Case Management

The Department of Health and Hospitals, Bureau of Health Services Financing adopts the following emergency rule under the Administrative Procedure Act, R.S. 49:950 et seq., and it shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule in July of 1999 restructuring targeted case management services under the Medicaid Program in order to enhance the quality of services and assure statewide access to services (*Louisiana Register*, Vol. 25, No. 7). In accordance with a settlement agreement, the Department now proposes to extend the provision of case management services to a new targeted group of Medicaid eligibles. The new targeted population shall be composed of Early Periodic Screening Diagnostic Treatment (EPSDT) recipients who are on the Mental Retardation/Developmental Disability (MR/DD) Waiver waiting list and meet the specified eligibility criteria. In addition, the Department proposes to amend the staff qualifications contained in the July 1999 rule to establish a new staff position for case management agencies entitled case manager trainee.

This action is necessary to protect the health and welfare of those children in the new targeted group who are in need of case management services to assist their families in accessing necessary medical and social services for them and who do not qualify for case management services under the current criteria. It is anticipated that the implementation of this emergency rule will increase expenditures for FY 1999-2000 by approximately \$1,227,699.

### **Emergency Rule**

Effective December 1, 1999, the Department of Health and Hospitals, Bureau of Health Services Financing extends the provision of case management services to a new targeted group of Medicaid eligibles. This new targeted population shall be composed of Early Periodic Screening Diagnostic Treatment (EPSDT) recipients who are between the ages of zero (0) and twenty-one (21) years old on the MR/DD Waiver waiting list and meet the specified eligibility criteria. The point of entry for targeted EPSDT case management services shall be the Office of Citizens with Developmental Disabilities (OCDD) regional offices. However, for those recipients under three (3) years of age, case management services will continue to be provided through Childnet. This new targeted population shall be served by agencies who

have accepted the Department's amendment to their existing contract. In addition, the staffing qualifications contained in the July 1999 rule are being amended to establish a new staff position for case management agencies entitled case manager trainee.

### **I. Eligibility**

A. In order to be eligible to receive case management services, the EPSDT recipient must be in the above-referenced age range and meet one of the following criteria:

1. placement on the MR/DD waiver waiting list on or after October 20, 1997, and have passed the OCDD Diagnosis and Evaluation (D&E) process by the later of: October 20, 1997 or the date they were placed on the MR/DD waiver waiting list; or

2. placement on the MR/DD waiver waiting list on or after October 20, 1997, but who did not have a D&E by the later of: October 20, 1997, or the date they were placed on the MR/DD waiver waiting list. Those in this group who subsequently pass or passed the D&E process are eligible for these targeted case management services. For those who do not pass the D&E process, or who are not undergoing a D&E, they may still receive case management services if they meet the definition of a person with special needs.

Special needs is defined as a documented, established medical condition, as determined by a licensed physician, that has a high probability of resulting in a developmental delay or that gives rise to a need for multiple medical, social, educational and other services. In the case of a hearing impairment, the determination of special needs must be made by a licensed audiologist or physician.

B. Documentation that substantiates that the EPSDT recipient meets the definition of special needs for case management services includes, but is not limited to:

1. receipt of special education services through the state or local education agency; or
2. receipt of regular services from one or more physicians; or
3. receipt of or application for financial assistance such as SSI because of a medical condition, or the unemployment of the parent due to the need to provide specialized care for the child; or
4. a report by the recipient's physician of multiple health or family issues that impact the recipient's ongoing care; or
  - a. a determination of developmental delay based upon the Parents' Evaluation of Pediatric Status, the Brignance Screens, the Child Development Inventories, Denver Developmental Assessment, or any other nationally recognized diagnostic tool.

### **II. Case Management Trainee**

The case management trainee position may be utilized to provide services to the following target populations: Infants and Toddlers, HIV, MR/DD Waiver, Elderly and Disabled Title Here

Adult Waiver and Targeted EPSDT. The case management trainee must meet the following educational qualifications: a bachelor's degree in social work, psychology, education, rehabilitation counseling, or a human-service-related field from an accredited college or university. The case management agency must obtain prior approval from the Bureau before a case management trainee can be hired. The maximum allowable caseload for a case manager trainee is twenty (20) recipients.

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

David W. Hood  
Secretary

9911#025

## **DECLARATION OF EMERGENCY**

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

#### **1999 Red Snapper Commercial Season**

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department, by the Commission in its resolution of August 5, 1999, to close the 1999 fall commercial red snapper season in Louisiana state waters when he is informed that the designated portion of the commercial red snapper quota for the Gulf of Mexico has been filled, or projected to be filled, the Secretary hereby declares:

Effective 12:00 noon November 5, 1999, the commercial fishery for red snapper in Louisiana waters will close and remain closed until 12:00 noon February 1, 2000. Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen once the recreational season opens. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with this closure, no person shall possess red snapper in excess of a daily bag limit, which may only be in possession during

the open recreational season as described above. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing red snapper taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5.

The Secretary has been notified by National Marine Fisheries Service that the commercial red snapper season in Federal waters of the Gulf of Mexico will close at 12:00

noon November 5, 1999. Closing the season in State waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

James H. Jenkins, Jr.  
Secretary

9911#006