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# Executive Orders

## EXECUTIVE ORDER BJ 10-14

### DOTD Guidelines for Vehicles, Trucks and Loads

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or manmade causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the State of Louisiana;

WHEREAS, pursuant to Proclamation No. 20 BJ 2010, a state of emergency was declared and is currently in effect and as a result has requested the assistance of other states;

WHEREAS, the safety and welfare of the inhabitants of the affected areas of Louisiana and surrounding states, require that the movements of operators of commercial motor carriers traveling on the public highways of the State of Louisiana for the purpose of emergency preparedness and disaster relief efforts be expedited;

NOW THEREFORE I, Bobby Jindal, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The following size and weight for vehicles on roadways maintained by the State of Louisiana shall not exceed the following limitations:

A. Maximum gross vehicle weight for vehicles equipped with five(5) or more weight-bearing axles with outer bridge spans of not less than forty (40) feet, but less than fifty-one (51) feet, shall not exceed ninety thousands (90,000) pounds. No single axle vehicle shall exceed twenty thousands (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousands (48,000) pounds in weight except with a permit issued by the Louisiana Department of Transportation and Development (hereafter "Department");

B. Maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than fifty-one (51) feet shall not exceed ninety-five thousands (95,000) pounds. No single axle vehicle shall exceed twenty thousand (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed fortyeight thousand (48,000) pounds in weight, except with a permit issued by the Department;

C. Maximum gross vehicle weight for vehicles equipped with four (4) weight-bearing axles with outer bridge spans of not less than forty-three (43) feet shall not exceed eighty thousand (80,000) pounds. No single axle vehicle shall exceed twenty thousand (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousand (48,000) pounds in weight, except with a permit issued by the Department.

D. Maximum dimensions shall not exceed fourteen (14) feet wide, fourteen (14) feet high, and ninety-five (95) feet long on Interstate highways and fourteen (14) feet wide, thirteen (13) feet six (6) inches high, and ninety-five (95) feet long on non-Interstate highways. Carriers, owners, and/or drivers of any vehicle being operated under this Order are responsible for verifying in advance that the actual dimensions and weight of the vehicle/load are acceptable for all routes being traveled. This includes, but is not limited to, areas deemed by Federal, state, or local officials as inaccessible due to damages caused by Tropical Storm Bonnie, overhead structures and/or construction areas; and

E. Any vehicle greater than eight (8) feet six (6) inches wide and less than or equal to fourteen (14) feet wide may travel during daylight hours only, beginning at sunrise and ending at sunset according to the times set by the National Weather Service. All such vehicles must travel with the required signs and flags properly placed and indicating that they bear oversized loads. All such vehicles which measure over twelve (12) feet wide must travel with a certified escort.

SECTION 2: The commercial vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel for commercial motor carriers engaged in disaster relief efforts in the State of Louisiana shall be waived. This permit waiver also applies to such vehicles/loads with weights and dimensions not exceeding those described in Section 1(A) through (D) above. However, such permits must be obtained from the Louisiana Department and Transportation and Development for vehicles exceeding those weights.

SECTION 3: Nothing in this Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or carrier, owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order, or other legal requirement not specifically waived herein.

SECTION 4: Nothing in this Order shall be construed or interpreted as being applicable to travel on non-state

maintained highways, or as being applicable to construction and building projects that are not in support of Tropical Storm Bonnie recovery and repair efforts.

SECTION 5: This Order is effective upon signature and shall continue in effect until Sunday, August 22, 2010 unless amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the city of Baton Rouge, on this 23rd day of July, 2010.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Jay Dardenne  
Secretary of State  
1008#125

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Economic Stability and Self-Sufficiency Section

Supplemental Nutrition Assistance Program (SNAP)  
Family Independence Temporary  
Assistance Program (FITAP)  
Kinship Care Subsidy Program (KCSP)  
(LAC 67: III.1229, 1949, 1980, 1987, and 5329)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III, Subpart 2, Section 1229; Subpart 3, Sections 1949, 1980, and 1987; and Subpart 13, Section 5329. This Emergency Rule is effective September 9, 2010 and shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective May 12, 2010, since it is effective for a maximum of 120 days and will expire on September 8, 2010 before the final Rule takes effect. (The final Rule will be published in the November 2010 issue.)

Due to the Mississippi Canyon 252 Well Incident on April 20, 2010, thousands of barrels of oil were released into the Gulf of Mexico. The oil spill has threatened hundreds of species of fish, birds, and other wildlife along the Gulf Coast. This, in turn, will affect thousands of licensed commercial fishermen, shrimpers, oystermen, and crabbers, and other small businesses. Hundreds of other seafood-related businesses and their employees will also likely suffer substantial economic injury. Many individuals who have recently lost income have resources that exceed the Supplemental Nutrition Assistance Program (SNAP) resource limit.

Due to the Mississippi Canyon 252 Well Incident, Louisiana requested a waiver from Food and Nutrition Service (FNS) to implement a modified SNAP. FNS denied the waiver request and suggested that Louisiana implement broad-based categorical eligibility to provide immediate access to SNAP benefits by those affected by the oil spill.

The agency will amend LAC 67 in order to implement broad-based-categorical eligibility which will make most if not all households categorically eligible for SNAP benefits because they will receive a non-cash, Temporary Assistance to Needy Families (TANF)/Maintenance of Effort (MOE) funded service. Any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident will be excluded as income for SNAP, Family Independence Temporary Assistance Program (FITAP), and Kinship Care Subsidy Program (KCSP).

Pursuant to 7 CFR 273.2(j) subject to FNS approval, the State agency, at its option, may extend categorical eligibility to any household (except those listed in paragraph (j)(2)(vii) of that section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with state money counted for MOE purposes under Title IV-A or federal

money under Title IV-A and that is designed to further purposes of goals three and four of the TANF block grant, as set forth in section 401 of P.L. 104-193, which requires participants to have a gross monthly income at or below 200 percent of the federal poverty level.

This change will help many recently unemployed fishermen and other individuals who worked in the seafood industry who have modest savings. Current rules require these workers to liquidate their savings before they can receive assistance, undermining their long-term financial stability.

## Title 67

### SOCIAL SERVICES

#### Part III. Office of Family Support

#### Subpart 2. Family Independence Temporary Assistance Program

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

#### Subchapter B. Conditions of Eligibility

#### §1229. Income

A. - A.31. ...

32. any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident in the Gulf of Mexico on April 20, 2010.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1(B), R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session; 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:383 (March 2006), LR 32:1616 (September 2006), LR 32:1912 (October 2006), LR 34:2678 (December 2008, LR), LR 36:

#### Subpart 3. Supplemental Nutrition Assistance Program (SNAP)

#### Chapter 19. Certification of Eligible Households

#### Subchapter H. Resource Eligibility Standards

#### §1949. Exclusions from Resources

A. ...

B. all of the resources of individuals who are included in a household that is categorically eligible.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:656 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:187 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003), LR 32:646 (April 2006). LR 34:2679 (December 2008), LR 36:

#### Subchapter I. Income and Deductions

#### §1980. Income Exclusions

A. - A.42. ...



43. any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident in the Gulf of Mexico on April 20, 2010.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171, P.L. 108-447, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:188(February 1995), LR 23:82 (January 1997), LR 29:607 (April 2003), LR 31:2956 (November 2005), LR 32:383 (March 2006), LR 32:1616 (September 2006), LR 36:

#### **Subchapter J. Determining Household Eligibility and Benefit Levels**

##### **§1987. Categorical Eligibility for Certain Recipients**

A. - A.4.b. ...

c. any member of the household is ineligible because of a drug related felony;

d. an individual who is disqualified for failure to comply with the work registration requirements;

e. an individual who is disqualified for failure to provide or apply for a social security number;

f. an individual who is on strike.

A.5. - D....

E. Households considered broad-based categorically eligible for Supplemental Nutrition Assistance Program (SNAP) benefits are households who receive a non-cash TANF/MOE funded benefit or service.

1. A household shall not be considered broad-based categorically eligible if:

a. any member of that household is disqualified for an intentional program violation;

b. the household is disqualified for failure to comply with the work registration requirements;

c. any member of the household is ineligible because of a drug related felony.

2. The following persons shall not be considered a member of a household when determining broad-based categorical eligibility:

a. an ineligible alien;

b. an ineligible student;

c. an institutionalized person;

d. an individual who is disqualified for failure to comply with the work registration requirements;

e. an individual who is disqualified for failure to provide or apply for a social security number;

f. an individual who is on strike.

3. Households which are broad-based categorically eligible are considered to have met the resource eligibility factor without additional verification.

4. Broad-based categorically eligible households must meet all Supplemental Nutrition Assistance Program eligibility factors except as outlined above.

5. Benefits for broad-based categorically eligible households shall be based on net income as for any other household.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274; F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services,

Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), LR 36:

#### **Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance**

##### **Subchapter B. Conditions of Eligibility**

##### **§5329. Income**

A. - A.31. ...

32. any payments other than wages received as a result of the Mississippi Canyon Well Incident in the Gulf of Mexico on April 20, 2010.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:1617 (September 2006), LR 32:1913 (October 2006), repromulgated LR 32:2098 (November 2006), LR 36:

Ruth Johnson  
Secretary

1008#087

#### **DECLARATION OF EMERGENCY**

##### **Department of Children and Family Services Economic Stability and Self-Sufficiency Section**

Supplemental Nutritional Assistance Program (SNAP)  
Iraqi, Afghani Immigrant—Qualified Alien  
(LAC 67:III 1223, 1931, 1932, 1934, 1995, and 1999)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend the Louisiana Administrative Code (LAC), LAC 67:III, Subpart 2, Chapter 12, Subchapter B, and Subpart 3, Chapter 19, Subchapters D, K, and M. This Emergency Rule is effective September 7, 2010, and shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective May 10, 2010, since it is effective for a maximum of 120 days and will expire on September 6, 2010 before the final Rule takes effect (The final Rules will be published in the November 2010 issue.)

Pursuant to P.L.111-118, the agency must render to Iraqi and Afghani Special Immigrant Visas (SIVs) the eligibility for federal public benefits to the same extent and for the same time period as refugees.

LAC 67:III, Subpart 2, Section 1223 and Subpart 3, Section 1931 are being amended to include as a qualified alien an Iraqi or Afghani immigrant who has been granted SIV status per a directive from Food and Nutrition Services (FNS) regarding the Supplemental Nutrition Assistance Program (SNAP).

LAC 67:III, Subpart 3, Section 1932 is being repealed to remove the time limitations for certain aliens and Section 1934, Alien Eligibility Criteria, is being added to define alien eligibility criteria and include an Iraqi or Afghani

immigrant who has been granted SIV status per a directive from FNS and the Department of Agriculture, Food and Nutrition Services, 7 CFR Part 273 Food Stamp Program: Eligibility and Certification Provisions of the Farm and Rural Investment Act of 2002; Final Rule, Section 273.4.

In accordance with an FNS directive, LAC 67:III, Subpart 3, Section 1995 is being amended to include an indigent alien as an exception to the sponsored alien rule.

LAC 67:III, Subpart 3, Section 1999, is being amended to remove the requirement to send a notice of adverse action when mail is returned from the post office as undeliverable per an FNS directive regarding Simplified Reporting (SR) requirements.

Emergency action in this matter is necessary as failure to promulgate the Rule in a timely manner could result in the imposition of sanctions or penalties by the United States Department of Agriculture (USDA), Food and Nutrition Service, the governing authority of the Supplemental Nutrition Assistance Program (formerly known as the Food Stamp Program) in Louisiana.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Office of Family Support**

#### **Subpart 2. Family Independence Temporary Assistance Program**

#### **Chapter 12. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter B. Conditions of Eligibility**

#### **§1223. Citizenship**

A. - A.10. ...

11. An Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with P. L. 111-118, section 8120).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), amended LR 28:1599 (July 2002), LR 32:1911 (October 2006), LR 36:

#### **Subpart 3. Supplemental Nutrition Assistance Program**

#### **Chapter 19. Certification of Eligible Households**

#### **Subchapter D. Citizenship and Alien Status**

#### **§1931. Qualified Aliens**

A. - A.10. ...

11. An Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 25:710 (April 1999), LR 28:1600 (July 2002), LR 36:

#### **§1932. Time Limitations for Certain Aliens**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711(April 1999), LR 28:1600 (July 2002), LR 29:606 (April 2003), LR 30:493 (March 2004), LR 36:

#### **§1934. Alien Eligibility Criteria**

A. The following qualified aliens are eligible for benefits:

1. refugees admitted under §207 of the Immigration and Nationality Act (INA);

2. asylees admitted under §208 of the INA; and

3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date [April 1, 1997] of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of P.L. 104-208);

4. *Cuban* and *Haitian* entrants as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as contained in §101(e) of P.L. 100-202 and amended by the 9th provision under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, P.L. 100-461, as amended;

6. an alien who is the victim of a severe form of trafficking in persons.

7. veterans who have met the minimum active-duty service requirements of Section 5303 A(d) of Title 38, United States Code, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, United States Code, and unmarried dependent children;

8. active-duty personnel (other than active duty for training) and their spouses, or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, United States Code, and unmarried dependent children;

9. aliens who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act or can be credited with such qualifying quarters;

10. effective October 1, 2002, individuals who are lawfully residing in the United States and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997;

11. individuals who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older;

12. effective October 1, 2003, individuals who are lawfully residing in the United States and are under 18 years of age;

13. effective April 1, 2003, individuals who have been lawful, permanent residents or otherwise qualified aliens for at least five years beginning on the date the immigrant was designated as a qualified alien by the Immigration and Naturalization Service.

14. an Iraqi or Afghani immigrant who has been granted Special Immigrant VISA (SIV) status.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, P.L. 107-171, and P.L. 111-118.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 36:

## **Subchapter K. Action on Household with Special Circumstances**

### **§1995. Sponsored Aliens**

A. The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, the alien parent of a battered child, or effective October 1, 2003, any alien under 18 years of age, an indigent alien that the State agency has determined is unable to obtain food and shelter, taking into account the alien's own income plus, any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s).

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P. L. 104-208, P. L. 105-33, P. L. 107-171, and 7CFR 273.4(c)(3)(iv).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:355 (February 1998), LR 30:493 (March 2004), LR 36:

## **Subchapter M. Notice of Adverse Action**

### **§1999. Reduction or Termination of Benefits**

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the household at the time of action in the following situations:

1. the agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or ended because of the disqualification;
2. benefits are reduced or terminated at the end of the certification period when the client timely reapplies;
3. the client has been certified in another state and that fact has been established;
4. the client signs a statement requesting closure or reduction in benefits and waives the right to advance notice;
5. benefits are reduced or terminated effective the month following the semi-annual report month as a result of changes reported through the semi-annual reporting process;
6. the agency receives a written report signed by the head of the household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility;
7. mass changes;
8. based on reliable information, the agency determines that the household has moved or will be moving out of the state prior to the next monthly issuance;
9. the household applied for cash assistance and food stamps at the same time and has been getting food stamps while waiting for approval of the cash assistance grant;
10. the client was a certified resident in a drug or alcohol treatment center or a group living arrangement which loses its state certification or FNS disqualifies it as a retailer;

11. a household certified under expedited processing rules provides postponed verification which reduces or terminates benefits.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 7 CFR 273.12(a)(1)(vii)

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 32: 2270 (December 2006), LR 36:

Ruth Johnson  
Secretary

1008#086

## **DECLARATION OF EMERGENCY**

### **Department of Children and Family Services Economic Stability and Self-Sufficiency Section**

TANF Initiatives—Family Violence Prevention and Intervention Program  
(LAC 67:III.5501, 5509, 5545, 5551, 5567, 5571, and 5575)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend Louisiana Administrative Code (LAC) 67:III, Subpart 15, Chapter 55, Temporary Assistance for Needy Families (TANF) Initiatives.

An Emergency Rule is necessary to add Section 5501, which provides an introduction to the TANF Initiatives and to address funding.

Section 5509 Domestic Violence Services is being amended to include males ages 18 and older in the audience targeted to receive education and training addressing the problem of statutory rape, a requirement that must be met to remain in compliance with Title IV of the Social Security Act, section 402. Additionally, the title of the program is being changed from Domestic Violence Services to Family Violence Prevention and Intervention Program to more accurately reflect the services being provided.

Sections 5545, 5551, 5567, 5571, and 5575 have been added as they were incorrectly removed through prior rulemaking.

This Emergency Rule is effective September 18, 2010 and rescinds any other Emergency Rule issued prior to this date referencing Family Violence Prevention and Intervention Program.

This Emergency Rule will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective May 21, 2010, since it is effective for a maximum of 120 days and will expire on September 17, 2010 before the final Rule takes effect. (The final Rule will be published in the November 2010 issue.) The authorization for emergency action in this matter is contained in Act 10 of the 2009 Regular Session of the Louisiana Legislature.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 15. Temporary Assistance for Needy Families  
(TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5501. Introduction to the TANF Initiatives**

A. The programs known collectively as the TANF Initiatives provide benefits in the form of services to needy families, defined as families who have earned income at or below 200 percent of the federal poverty level, or a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Supplemental Nutrition Assistance Program (SNAP) benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), or free or reduced school lunch.

B. Not all TANF Initiatives require a family to be "needy" as defined above in order to receive services. There are initiatives that target children, parents, or caretaker relatives of minor children and require only that the person be in need of the services provided by the initiative.

C. The goals of the TANF Initiatives are:

1. to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
3. to prevent and reduce the incidence of out-of-wedlock pregnancies; and
4. to encourage the formation and maintenance of two-parent families.

D. These programs or services may be adjusted or eliminated at the discretion of the secretary, based upon the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 36:

**§5509. Family Violence Prevention and Intervention Program**

A. The Children and Family Services (DCFS) shall enter into Memoranda of Understanding or contracts to provide services for victims of domestic violence and their children, including rural outreach and community collaboration training for the purpose of educating attendees about domestic violence and the available services provided by the Children and Family Services (DCFS) including but not limited to TANF, Supplemental Nutrition Assistance Program, child care, and employment training. Additionally, these services will include education and training addressing the problem of statutory rape. These programs are designed to not only reach the public, but also law enforcement officials, educators, relevant counseling services, and males 18 and older.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session, Act 18, 2007 Reg. Session, Act 10, 2009 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November

2006), amended LR 33:2205 (October 2007), LR 34:693 (April 2008), LR 34:2415 (November 2008), LR 36:

**§5545. Remediation and Tutoring Programs**

A. Children and Family Services (DCFS) shall enter into a Memorandum of Understanding with the Department of Education to establish programs designed to increase the likelihood of a student scoring above the "unsatisfactory" achievement level on the Graduate Exit Exam and the LEAP 21 exam and include:

1. Graduate Exit Exam Summer Remediation—designed to provide additional remedial instruction to targeted students, that is, students who scored "unsatisfactory" on the English language arts and/or mathematics components of the Graduate Exit Exam;

2. Louisiana Education Assessment Program (LEAP) 21 Summer Remediation—designed to provide additional remedial instruction to targeted students, that is, fourth and eighth grade students who did not take the spring LEAP 21 test and fourth and eighth grade students who scored "unsatisfactory" on the English language arts and/or mathematics components of the LEAP 21; and

3. Louisiana Education Assessment Program (LEAP) 21 Tutoring—designed to provide intense early intervention and remedial instruction to targeted students in an effort to increase the likelihood of them scoring above the "unsatisfactory" level on the LEAP 21. The targeted group includes fourth and eighth grade students who have been retained because of their having scored at the "unsatisfactory" level on the English language arts and/or mathematics components of the LEAP 21 tests, and fourth and eighth grade students whose third and seventh grade IOWA test scores were below the thirtieth percentile and are considered to be at risk of scoring at the "unsatisfactory" level on the English language arts and/or mathematics components of the LEAP 21 tests.

B. These services meet TANF goal 3, to prevent and reduce the incidence of out-of-wedlock pregnancies by encouraging youths to remain in school, reducing their risk of engaging in negative behavior and increasing opportunities for families to become self-sufficient through education and training.

C. Eligibility for services is limited to families which include a minor child living with a custodial parent or an adult caretaker relative. A family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch is eligible.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 31:485 (February 2005), LR 34:695 (April 2008), LR 36:

**§5551. Community Response Initiative (Effective July 1, 2002)**

A. The Children and Family Services (DCFS) may enter into Memoranda of Understanding or contracts to develop

innovative and strategic programming solutions suited to the unique needs of Louisiana's communities.

B. The services provided by the various partners must meet one, or a combination of, the four TANF goals:

1. Goal 1—to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

2. Goal 2—to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

3. Goal 3—to prevent and reduce the incidence of out-of-wedlock pregnancies; and

4. Goal 4—to encourage the formation and maintenance of two-parent families.

C. Eligibility for those services meeting TANF goals 1 and 2 is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamp benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaChip) benefits, Supplemental Security Income (SSI), Free or Reduced Lunch, or who has earned income at or below 200 percent of the federal poverty level. For TANF goals 1 and 2 a family consists of minor children residing with custodial parents, or caretaker relatives of minor children.

D. Eligibility for those services meeting TANF goals 3 and 4 may include any family in need of the provided services regardless of income. For TANF goals 3 and 4 a family consists of a minor child residing with a custodial parent or caretaker relative of the minor child, and non-custodial parents, and legal guardians.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2374 (November 2002), amended LR 34:695 (April 2008), LR 36:

#### **§5567. Legal Access and Visitation**

A. Effective January 1, 2009, the Children and Family Services (DCFS) will implement the TANF Initiative, Legal Access and Visitation.

B. Services provided include legal services that may include: mediation, development of parenting plans, court ordered visitation, or other services to obtain regular visitation arrangements with the children. Referrals that assist non-custodial parents to overcome social, financial and emotional barriers that hinder access to their children will also be provided.

C. These services meet the TANF goal to encourage the formation of and maintenance of two-parent families by improving the parent's ability to act in the best interest of their children, providing the children continuous and quality access to both parents, improving the well-being of the children, and encouraging healthy relationships, youth development, and responsible fatherhood.

D. Eligibility for services is limited to non-custodial parents of minor children who have active child support cases under Title IV-D of the Social Security Act.

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

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 19, 2008 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 35: 966 (May 2009), amended LR 36:

#### **§5571. Parenting/Fatherhood Services Program (Effective September 30, 2002)**

A. The Children and Family Services (DCFS) shall enter into contracts to create programs that will assist low-income fathers with various skills including employment, life, parenting, and other skills in order to increase their ability to provide emotional and financial support for their children, and to create a network of community- and faith-based programs that will provide linkages to and for state entities, specifically Child Support Enforcement Services.

B. These services meet TANF goal 2, to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage, and TANF goal 4, to encourage the formation and maintenance of two-parent families by eliminating emotional, social, financial, and legal barriers that hinder a father's ability to be fully engaged in his children's lives.

C. Eligibility for services is limited to fathers of minor children, who have earned income at or below 200 percent of the federal poverty level.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:191 (February 2003), amended LR 34: 697 (April 2008), LR 36:

#### **§5575. Teen Pregnancy Prevention Program**

A. Effective July 1, 2003, The Children and Family Services (DCFS) shall enter into Memoranda of Understanding or contracts to prevent or reduce out-of-wedlock and teen pregnancies by enrolling individuals 8 through 20 in supervised, safe environments, with adults leading activities according to a research-based model aimed at reducing teen pregnancy. These programs will consist of curriculums which include, but are not limited to, topics designed to educate males 18 years and older on the problem of statutory rape.

B. Services offered by providers meet TANF goal 3, to prevent and reduce the incidence of out-of-wedlock pregnancies by providing research-based prevention and intervention programming for students who live in poor communities and/or show evidence of academic underperformance, dropping out, or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, or imprisonment.

C. Eligibility for services is not limited to needy families. Custodial and non-custodial parents, legal guardians, or caretaker relatives of youth who are participants in the program may also receive parenting training and educational services.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004), amended LR 34:697 (April 2008), LR 34:2415 (November 2008), LR 36:

Ruth Johnson  
Secretary

1008#088

## DECLARATION OF EMERGENCY

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

Scholarship/Grant Programs—Chafee Educational  
and Training Voucher Program  
(LAC 28:IV.Chapter 18)

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

This rulemaking will create a new Chapter 18 in the Commission's Scholarships/Grants rules to provide for the administration of the Chafee Educational Training Voucher (ETV) Program by the Commission in accordance with a Memorandum of Understanding between the Louisiana Student Financial Assistance Commission and the Louisiana Department of Social Services, Office of Community Services. The Chafee Program provides grants to certain students who have been in the foster care system to pursue postsecondary education or training to enter the workforce.

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

This Declaration of Emergency is effective July 14, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG10121E)

## Title 28 EDUCATION

### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs Chapter 18. Chafee Educational and Training Voucher Program

#### §1801. General Provisions

A. The Chafee Educational and Training Voucher (ETV) Program is administered by the Louisiana Office of Student Financial Assistance (LOSFA) in accordance with a Memorandum of Understanding by and between the Louisiana Student Financial Assistance Commission (LASFAC) and the Louisiana Department of Social Services, Office of Community Services (DSS/OCS).

B. Description, History and Purpose. The Chafee ETV Program is administered in accordance with the federal

Chafee Act, 42 U.S.C.A. 677 et seq., to provide grants to certain students who have been in the foster care system to pursue postsecondary education or training to enter the workforce.

C. Effective Date. The Chafee ETV Program will be administered by LOSFA beginning with the 2010-2011 academic year.

D. Eligible Semesters/Terms. The Chafee ETV is available to students throughout the academic year.

E. Award Amount. A Chafee ETV recipient may receive up to \$5,000 during the academic year. The award amount is determined by the recipient's financial need as calculated in accordance with the Higher Education Act of 1965, as amended.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

#### §1803. Definitions

A. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

*Academic Year*—the academic year begins with the fall semester or term of the award year, includes the winter term, if applicable, the spring semester or term, and concludes with the completion of the summer session, if applicable.

*Educational and Training Voucher*—a federal grant that is available to certain students who have been in the foster care system based on the student's financial need.

*Foster Care System*—a protective service administered by the Louisiana Department of Social Services, Office of Community Services, or by a similar agency in another state, for children who must live apart from their parents due to neglect, abuse, or special family circumstances which requires that the child be cared for outside the family home.

*Institution of Higher Education*—a school that:

- a. Is eligible to receive funds under Title IV of the Higher Education Act of 1965; and
- b. awards a bachelor's degree; or
- c. provides a program of study that is at least two years long in which a student can earn credit toward a bachelor's degree; or
- d. provides not less than one year of training towards gainful employment; or
- e. provides vocational training for gainful employment and has been in existence for at least two years.

*Legal Guardianship*—the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the responsibility for the child's general welfare until he reaches the age of majority, subject to any residual rights possessed by the child's parents. It shall include but not necessarily be limited to the rights and responsibilities of legal custody as established in the Louisiana Children's Code.

*Postsecondary Education*—any educational program at an institution of higher education which admits as regular students those individuals with a high school diploma or equivalent, or admits as regular students persons who are beyond the age of compulsory school attendance, including,

but not limited to, academic programs leading to an associate or baccalaureate, graduate or professional degree, or training which leads to a skill, occupational, or technical certificate or degree.

*Satisfactory Academic Progress*—a standard established in accordance with the Higher Education Act of 1965, as amended, by the institution at which a Chafee ETV recipient will be enrolled when receiving the ETV for measuring a student's progress in his or her educational program.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

#### **§1805. Eligibility**

A. To establish eligibility, a student must:

1. be ages 15 to 21, except that a student who was participating in the Chafee ETV Program at age 21 may continue to receive ETVs until he attains the age of 23; and
2. be in the foster care system, or aged out of the foster care system, or was under Legal Guardianship, or was in the foster care system or under Legal Guardianship and was adopted after age 16; and
3. be enrolled in postsecondary education; and
4. annually complete the Free Application for Federal Student Aid.

B. To continue to receive Chafee ETV, a student must:

1. not have attained the age of 21, or the age of 23 if the student was receiving a Chafee ETV at the age of 21 and received the Chafee ETV continuously; and
2. be making satisfactory academic progress in his program of study.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

#### **§1807. Eligibility of Institutions of Higher Education**

A. Institutions of Higher Education Eligible to Participate

1. Louisiana public colleges and universities are authorized to participate in the Chafee ETV program.
2. Regionally accredited private colleges and universities that are members of the Louisiana Association of Independent Colleges and Universities, Inc. (LAICU) are authorized to participate in the Chafee ETV program. As of June 2010, LAICU membership included Centenary College, Dillard University, Louisiana College, Loyola University, New Orleans Baptist Theological Seminary, Our Lady of the Lake College, Our Lady of Holy Cross College, St. Joseph Seminary College, Tulane Medical Center, Tulane University and Xavier University.
3. Louisiana proprietary schools licensed pursuant to Chapter 24-A of Title 17 of the Louisiana Revised Statutes are authorized to participate in the Chafee ETV program.
4. Any other institution of learning that is an Institution of Higher Education.

B. Audits

1. Institutions of Higher Education that participate in the Chafee ETV Program grant LOSFA, the Louisiana legislative auditor, and the Louisiana Department of Social Services the right to inspect records and perform on-site audits of each institution's administration of the program for

the purpose of determining the institution's compliance with state law and applicable program rules and regulations.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

#### **§1809. Responsibilities of Participating Institutions of Higher Education**

A. Preliminary Eligibility Determination

1. Institutions of Higher Education must verify the student's age.
2. Institutions of Higher Education must determine whether the student is or was prior to age 18 an orphan or ward of the court in accordance with procedures established by the postsecondary institution for verifying information reported by the student on the Free Application for Federal Student Aid.
3. If the school determines that the student is an orphan or ward of the court in accordance with its procedures and this Section, it shall provide to LOSFA the student's name, social security number, and current address.

B. Continuing Eligibility

1. Institutions of Higher Education must verify the student is making satisfactory academic progress.
2. If a prior recipient is making satisfactory academic progress, it shall provide to LOSFA the student's name, social security number, and current address.

C. Award Amount Determination

1. Institutions of Higher Education will determine the student's Chafee ETV amount based upon his financial need in accordance with the Higher Education Act of 1965, as amended, and will report that award amount to LOSFA.
2. Institutions of Higher Education shall provide students the opportunity to appeal the amount of the Chafee ETV amount if the award to the student is less than \$5,000. Such appeals shall be conducted in accordance with the Institution of Higher Education's procedures for appealing Title IV student aid eligibility. Immediately upon receipt of an appeal, the Institution of Higher Education shall notify LOSFA of the appeal, the student's name, and the reason for awarding less than the full grant amount. In the event the student is not satisfied with the school's final decision on the appeal, the Institution of Higher Education shall advise the student that he may appeal the Institution of Higher Education's decision to the Department of Social Services.

D. Certification of Student Data

1. Upon request by LOSFA, and for the purpose of meeting federal audit requirements for the Chafee Grant, an Institution of Higher Education shall report the following data:
  - a. admission and enrollment; and
  - b. semester hours attempted; and
  - c. semester hours earned;
  - d. semester quality points earned; and
  - e. resignation from the institution or withdrawal from all courses.

E. Program Billing.

1. If Institution of Higher Education operates on a semester or term basis, it shall divide the student's annual Chafee ETV amount by the number of semester/terms the student will be attending and it shall bill LOSFA for the resulting amount at the beginning of each semester or term the student attends.

2. If the Institution of Higher Education operates on a basis other than semester or term, it shall bill LOSFA for one quarter of the student's Chafee grant amount on September 1, December 1, March 1, and June 1, if the student's program of study is at least one full year. If the student's program of study is less one full year, the school will divide the Chafee ETV amount by the number of billing dates encompassed by that program and bill LOSFA the resulting amount.

3. Submission of a bill for a student is certification by the post-secondary institution that the student is enrolled at the institution and has maintained satisfactory academic progress.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

### **§1813. Responsibilities of the Louisiana Department of Social Services**

A. The Department of Social Services shall verify that a student:

1. was in the foster care system, or aged out of the foster care system; or
2. was under Legal Guardianship; or
3. was in the foster care system or under Legal Guardianship and was adopted after age 16; or
4. is a Native American whose Indian Tribe has an approved plan under Title IV-E of the Social Security Act for foster care, adoption assistance, and kinship guardianship within that Indian Tribe.

B. The Department of Social Services will notify LOSFA of any students who are eligible to receive a Chafee ETV and for whom LOSFA did not previously request verification in accordance with §1817.A., including those students who may be attending school in a state other than Louisiana.

C. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Department of Social Services shall develop, approve and deliver a plan to LOSFA to address the shortfall.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

### **§1817. Responsibilities of LOSFA**

A. LOSFA shall:

1. verify a student's eligibility to receive a Chafee ETV with the Department of Social Services.
2. pay program funds to the eligible post-secondary institution in which the student is enrolled.
3. maintain a secure database of all information collected on recipients and former recipients, including name, address, social security number, program of study, name of the institution(s) the recipient attended, and amounts disbursed.
4. notify the Department of Social Services immediately if projections indicate that sufficient funds will

not be available to pay all eligible students the amount originally awarded to those students at the beginning of the Academic Year.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

### **§1819. Responsibilities of LASFAC**

A. LASFAC shall promulgate administrative rules in accordance with the Louisiana Administrative Procedure Act, in consultation with the Louisiana Department of Social Services and in accordance with a Memorandum of Understanding entered into by and between LASFAC and the Louisiana Department of Social Services.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 36:

George Badge Eldredge  
General Counsel

1008#072

## **DECLARATION OF EMERGENCY**

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

Scholarship/Grant Programs—Louisiana GO Grant  
(LAC 28:IV.Chapter 12)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, 17:3046-3046.2, R.S. 17:3048.1, R.S. 56:797.D(2)].

This rulemaking will change the methodology to determine eligibility to participate in the GO Grant Program to provide that a student is eligible for a GO Grant if he is eligible for and is receiving a federal Pell grant or a financial need grant and to provide that the Board of Regents sets the maximum award amount to students based on the appropriation by the legislature for the academic year.

The Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students. This Declaration of Emergency is effective July 14, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG10122E)



**Title 28  
EDUCATION**

**Part IV. Student Financial Assistance—Higher  
Education Scholarship and Grant Programs  
Chapter 12. Louisiana GO Grant**

**§1203. Definitions**

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

\* \* \*

*Education Allowance*—Repealed  
*Education Cost Gap (ECG)*—Repealed.  
*Education Cost Gap (ECG) Threshold*—Repealed

\* \* \*

*Financial Need*—the student's costs of attendance minus the expected family contribution (EFC) and minus the student's federal Pell grant.

\* \* \*

*Louisiana Basic College Costs (LBCC)* —Repealed

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 *et seq.*

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2614 (December 2007), amended LR 34:236 (February 2008), LR 35:647 (April 2009), LR 35:2349 (November 2009), LR 36:

**§1205. Application and Initial Eligibility**

A. - B.2. ...

3. have financial need; and

B4.a. - c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 *et seq.*

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:

**§1207. Continuing Eligibility**

A. - B.1. ...

2. The student must still have financial need.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 *et seq.*

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:

**§1211. Responsibilities of Eligible Louisiana  
Institutions**

A. - C.2. ...

3. the payment request shall include the social security number, college code, term, date, hours attempted, award amount, and amount requested for each student.

C.4. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. R.S. 17:3046 *et seq.*

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:

**§1213. Responsibilities of LOSFA**

A. - B. ...

C. LOSFA shall maintain a database of all students who have received the GO Grant, included social security number, college code, term, date, hours attempted, award amount, annual amount received, and aggregate amount received. In the event LOSFA receives a payment request in an amount that would exceed the student's eligibility, LOSFA will pay only that amount that will not exceed the student's eligibility.

D. Adequacy of Funding

1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available to pay all anticipated awards for subsequent semesters, terms and sessions of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. LOSFA will provide to the Board of Regents information that is necessary to determine appropriate funding amounts upon the request of the Board of Regents.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 *et seq.*

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:

**§1217. Responsibilities of the Board of Regents**

A. At least on an annual basis, the Board of Regents shall review the amount appropriated for this program, and based on that figure, determine the maximum amount to be received by students attending school on a full-time, half-time, and less than half-time basis, and it shall provide notice to LOSFA of that amount.

B. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 *et seq.*

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:2350 (November 2009), LR 36:

George Badge Eldredge  
General Counsel

1008#071

**DECLARATION OF EMERGENCY**

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

Scholarship/Grant Programs—TOPS  
(LAC 28:IV.301, 701, 703, 705, 801, 803, 1901, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant

programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)].

This rulemaking implements Acts 201, 641, 724 and 758 of the 2010 Regular Session of the Louisiana Legislature. These Acts authorize an increase the book allowance and Taylor Opportunity Program for Students (TOPS) Performance and Honors stipends for members of the National Guard; provides a book allowance for members of the National Guard with the TOPS Tech Award; allow students to qualify for the TOPS Tech award with a silver level score on the assessments of the ACT WorkKeys system; allow use of the TOPS Opportunity, Performance and Honors Awards at certain proprietary and cosmetology schools; and changes the TOPS Core Curriculum requirements for the Opportunity, Performance and Honors Awards from 17.5 to 19 units beginning with students graduating in 2014.

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

This Declaration of Emergency is effective July 14, 2010, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG10120E)

## **Title 28**

### **EDUCATION**

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

##### **Chapter 3. Definitions**

###### **§301. Definitions**

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

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*Average Award Amount (TOPS-Tech)*—is applicable to those students awarded the TOPS-Tech and TOPS Opportunity, Performance, and Honors Awards who attend a regionally accredited independent college or university in Louisiana that is a member of the Louisiana Association of Independent Colleges and Universities or who attend an eligible cosmetology or proprietary school and are enrolled in a vocational, technical education certificate or diploma program or non-academic undergraduate degree program, and is determined by dividing the total dollar value of awards, which are made to students enrolled in the same types of programs in the prior program year (non-academic program) at eligible public colleges and universities that do not offer academic degrees at the baccalaureate level, by the total number of students that received the awards. To ensure that the average award amount (TOPS Tech) is not reduced for students during program year (non-academic program) 2006-2007 because of the adverse affects of Hurricanes Katrina and Rita on student enrollment, the average award amount (TOPS Tech) for program year (non-academic

program) 2006-2007 shall be the same as calculated for program year (non-academic program) 2005-2006.

*Award Amount*—an amount equal to tuition at the school attended, for those students attending a Louisiana public college or university, as determined by the commission, which may be used by the student to pay any educational expense included in that student's "Cost of Attendance." The amount paid for TOPS and TOPS-Tech Awards shall be as follows.

a. - c. ...

d. For students with the TOPS Opportunity, Performance, and Honors Award attending a regionally accredited independent college or university in Louisiana that is a member of the Louisiana Association of Independent Colleges and Universities or who attend an eligible cosmetology or proprietary school and enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree, the amount shall equal the average award amount (TOPS-Tech).

e. - h. ....

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*Eligible Colleges or Universities*—Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities; for recipients of the TOPS Tech Award only, beginning with the 2009-2010 Academic Year (College), and for recipients of the TOPS Tech, Opportunity, Performance and Honors Award, beginning with the 2010-2011 Academic Year (College), any school that has a valid and current certificate of registration issued by the State Board of Cosmetology in accordance with law and that is accredited by an accrediting organization recognized by the United States Department of Education and any proprietary school that has a valid and current license issued by the Board of Regents in accordance with law and that is accredited by an accrediting organization recognized by the United States Department of Education.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

**HISTORICAL NOTE:** Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:

**Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards**

**§701. General Provisions**

A. - E.3.b. ...

4. a. Through the 2009-2010 Academic Year (College), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus any applicable TOPS stipend and a sum of not more than \$150 per semester or \$300 annually for the actual cost of books and other instructional materials.

b. Beginning with the 2010-2011 Academic Year (College), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students with the TOPS Opportunity, Performance and Honors Award participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus a sum of \$300 per semester or \$600 per academic year to be applied toward the cost of books and other instructional materials. In addition, those students with the Performance Award shall receive \$400 per semester or \$800 per academic year for other educational expenses and those students with the Honors Award shall receive \$800 per semester or \$1,600 per academic year for other educational expenses.

E.5 - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1645-1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995 (September 2000), LR 26:2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003), LR 29:2372 (November 2003), LR 30:1161 (June 2004), LR 31:2213 (September 2005), LR 35:228 (February 2009), LR 36:

**§703. Establishing Eligibility**

A. - A.5.a.i(d) ...

(e). beginning with the graduates of academic year (high school) 2007-2008 through 2012-13, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry

Units	Course
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among the following math subjects: Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Mathematics I [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Pre-Calculus], Advanced Mathematics II [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Functions and Statistics], Integrated Mathematics III or the following science subjects: Biology II, Chemistry II, Physics or Physics II
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
½	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(f). beginning with the graduates of academic year (high school) 2013-14, at the time of high school graduation, an applicant must have successfully completed 19 units of high school course work that constitutes a core

curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
2	Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Math – Pre-Calculus, Advanced Math – Functions and Statistics, Integrated Mathematics III
1	Biology
1	Chemistry
2	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit)
1	American History
2	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

A.5.a.ii.(a). - J.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:

### §705. Maintaining Eligibility

A. - A.6.b. ...

c. in an academic graduate or professional program at an eligible college or university, by the end of each academic year (college), earn at least the total college credit hours required by the college or university for full time enrollment for each semester or quarter as determined by totaling the earned hours reported by the institution for each semester or quarter in the academic year (college). These hours shall not include hours earned during qualified summer sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

d. in an eligible cosmetology or proprietary school, meet the federal grant aid steady academic progress requirement at that school; and

7. - .8.c. ...

d. the minimum grade necessary to maintain good standing, if enrolled in a graduate or professional program; or

e. meet the federal grant aid steady academic progress requirement at that school, if enrolled in an eligible cosmetology or proprietary school; and

A.9 - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:437 (March 2007), LR 34:1390 (July 2008), LR 36:491 (March 2010), LR 36:

### Chapter 8. TOPS-Tech Award

#### §801. General Provisions

A. - D.2. ...

3. Beginning with the 2010-2011 Academic Year (College), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students with the TOPS Tech Award participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus a sum of \$300 per semester or \$600 per program year (nonacademic program to be applied toward the cost of books and other instructional materials.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 26:1997 (September 2000), repromulgated LR 27:1854 (November 2001), LR 36:

#### §803. Establishing Eligibility

A. - A.5.d.iii. ...

.6. if qualifying under the terms of §803.A.5.a., at the time of high school graduation:

a. have successfully completed one of the following core curriculums:

i. high school course work constituting the TOPS core curriculum for the Opportunity, Performance and Honors Awards as defined in §703.A.5. and documented on the student's official transcript as approved by the Louisiana Department of Education; or

a.ii. - b. ...

7. have achieved an *ACT score*, as defined in §301, of at least:

a. if qualifying under §803.A.5.a, an ACT composite score of at least 17 or beginning with the 2010-2011 program year (non academic program) in the alternative, have attained a silver level score on the assessments of the ACT WorkKeys system; or

A.7.b.i. - B.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 36:491 (March 2010), LR 36:

## **Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions**

### **§1901. Eligibility of Post-Secondary Institutions to Participate**

A. - E. ...

F. Eligible cosmetology and proprietary schools may participate in TOPS for all awards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 30:784 (April 2004), LR 31:3111 and 3114 (December 2005), LR 35:235 (February 2009), LR 35:1490 (August 2009), LR 36:

### **§1903. Responsibilities of Post-Secondary Institutions**

A. - B.5. ...

6. upon the school's certification that a recipient of a TOPS Opportunity, Performance or Honors Award is enrolled full-time, institutions shall bill for and LASFAC will reimburse the institution for each such recipient as follows:

a. - h. ...

i. for students enrolled in eligible cosmetology and proprietary schools, institutions may bill for an amount of up to one quarter of the annual *average award amount (TOPS-Tech)*, as defined in §301;

B.7. - D.5.b. ...

6. for TOPS Awards at cosmetology or proprietary schools:

a. verify the student has continued to make steady academic progress; and

b. verify the student is enrolled full time on the billing date.

E. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December

2005), LR 33:1340 (July 2007), LR 35:1233 (July 2009), LR 35:1490 (August 2009), LR 35:1491 (August 2009), LR 36:

George Badge Eldredge  
General Counsel

1008#073

## **DECLARATION OF EMERGENCY**

### **Office of the Governor Division of Administration Office of Statewide Uniform Payroll**

403(b) Tax Shelter Annuity Program

The Division of Administration through the Office of State Uniform Payroll, is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 42:455 (A), adopts the following Emergency Rule effective July 1, 2010. This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act, or until adoption of the final Rule, whichever occurs first.

The Division of Administration through the Office of State Uniform Payroll finds it necessary to allow employers of non-university state employees paid through the ISIS Human Resource system who work in the education field to formally adopt an Internal Revenue Service Section 403(b) Tax Shelter Annuity program. Under Regulation TD 9340 of the Internal Revenue Code, employers are required to take active control of the administration of Section 403(b) plans their employees participate in by January 1, 2009, or participating employees will risk losing the tax deferred status afforded under Section 403(b), and may risk losing other benefits and retirement options afforded under Section 403(b). The Division of Administration, through the Office of State Uniform Payroll, finds that in excess of 260 non-university employees paid through the ISIS HR system working in the education field have voluntarily participated in Section 403(b) plans through direct payroll deductions as allowed by R.S. 42:455 (A) without formally adopting conforming plans. The rights and interests of these state employees, as well as other employees who may wish to participate, will be adversely affected unless the state allows the immediate establishment of a formally administered 403(b) Tax Shelter Annuity program which meets Internal Revenue Service regulations.

#### **Title 4**

#### **ADMINISTRATION**

#### **Part III. PAYROLL**

### **Chapter 9. 403(b) TAX SHELTER ANNUITY PROGRAM**

#### **§901. Establishment**

A. The following identified agencies may sponsor and participate in 403(b) plans for the benefit of their qualified education employees through payroll deductions and services afforded by the ISIS HR System:

1. 620 Board of Supervisors for the University of Louisiana System;

2. 653 Louisiana School for the Deaf (renamed as Louisiana Schools for the Deaf and Visually Impaired effective 07/01/10);

3. 657 Louisiana School for Math, Science and the Arts;
4. 671 Board of Regents;
5. 673 New Orleans Center for Creative Arts;
6. 674 Louisiana Universities Marine Consortium;
7. 678 Department of Education State Activities;
8. 682 Recovery School District; and
9. any other ISIS HR Paid agency which meets the Internal Revenue Code requirements.

B.1. Each agency to sponsor a 403(b) plan shall sign an inter-agency agreement with the Division of Administration, agreeing to sponsor a 403(b) plan written to the agency's specifications. Each written plan, and any subsequent amendments, shall be approved as to form by the Commissioner of Administration through the Office of State Uniform Payroll, and shall comply with this emergency rule and all applicable IRS regulations. All plan agreements must be signed by the agency Appointing Authority and forwarded to the Office of State Uniform Payroll for review. The following plan options shall not be allowed:

- a. Roth 403(b) contributions;
- b. employer contributions; and
- c. 15 year service catch-up options.

2. Plans may provide for a distribution option at age 59 1/2. All plans shall allow participation by all eligible employees. Loan repayments shall not be handled through payroll deduction.

C. Each agency, with oversight and approval of the Commissioner of Administration through the Office of State Uniform Payroll, shall adopt and begin administration of written 403(b) plans covering qualified ISIS HR paid education employees by October 31, 2010.

D. The Office of State Uniform Payroll shall serve as the payroll agent/paymaster of the plan responsible for directing payroll deductions to the appropriate vendor(s). Agencies must work with the Office of State Uniform Payroll if a desired vendor does not have a current payroll deduction. The Office of State Uniform Payroll shall delegate any responsibility for making all eligible employees aware of plan participation ("universal awareness") to each individual agency sponsoring a plan. All plans must be monitored for IRS compliance through a plan monitor. Any 403(b) plan sponsored shall be voluntary, shall be designated as non-ERISA, and shall be non-contributory on the part of any sponsor, employer or agency of the state.

E. The sponsors, in cooperation with the Division of Administration, are authorized to enter into contracts with commercially available plan monitors, at no cost, to assist in formulating and instituting their 403(b) Tax Shelter Annuity plans. Once adopted, any 403(b) plan shall be managed by the sponsor in the best interests of the participating employees, subject to any rule or regulation adopted by the Division of Administration.

F. The sponsors, in cooperation with the Division of Administration, shall develop formal regulations governing the operation of sponsored plans no later than October 31, 2010. Formal rules shall be adopted through ordinary process allowing the establishment and operation of the 403(b) Tax Shelter Annuity Program. Nothing shall prevent the Division of Administration from extending this emergency rule from time to time as may be necessary regarding the duties and operation of sponsored plans and to

ensure the continued operation of the 403(b) Tax Shelter Annuity Program.

G. If the Division of Administration determines that continued sponsorship of any 403(b) Tax Shelter Annuity plan for state employees paid through the ISIS HR System is not in the best interests of the state, it shall cause the sponsoring agencies to give adequate notice to the participants prior to terminating the plan, and shall cause the sponsoring agencies to comply with all applicable IRS regulations related to dissolving 403(b) plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455 (A).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Statewide Uniform Payroll, LR 36:

Angele Davis  
Commissioner

1008#037

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

All Inclusive Care for the Elderly  
Reimbursement Rate Reduction  
(LAC 50:XXIII.1301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends LAC 50:XXIII.1301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Program of All Inclusive Care for the Elderly (PACE) to: 1) remove the requirement that eligibility decisions be approved by the state administering agency; 2) revise PACE disenrollment criteria; 3) allow for service area specific rates instead of one statewide rate; and 4) clarify when the obligation for patient liability begins (*Louisiana Register*, Volume 33, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult

Services have determined that it is necessary to amend the provisions governing the reimbursement methodology for PACE to reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$177,767 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for the Program of All Inclusive Care for the Elderly to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXIII. All Inclusive Care for the Elderly**

#### **Chapter 13. Reimbursement**

#### **§1301. Payment**

A. - J.3. ...

K. Effective for dates of service on or after August 1, 2010, the monthly capitated amount paid to a PACE organization shall be reduced by 2 percent of the capitated amount on file as of July 31, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:250 (February 2004), amended LR 33:850 (May 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#009

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Ambulatory Surgical Centers  
Reimbursement Rate Reduction  
(LAC 50:XI.7503)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.7503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is

directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the April 20, 1977 Rule governing ambulatory surgical services and amended the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates as a result of a budgetary shortfall in state fiscal year 2009. These provisions were promulgated in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the bureau promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ambulatory surgical centers to further reduce the reimbursement rates paid for ambulatory surgical services (*Louisiana Register*, Volume 36, Number 2). The department determined that it was necessary to repeal the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for ambulatory surgical centers to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$182,648 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for ambulatory surgical centers to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XI. Clinic Services**

#### **Subpart 11. Ambulatory Surgical Centers**

#### **Chapter 75. Reimbursement**

#### **§7503. Reimbursement Methodology**

A. - C. ...

D. Effective for dates of service on or after February 5, 2010, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 5 percent of the rate in effect on February 4, 2010.

E. Effective for dates of service on or after August 1, 2010, the reimbursement for surgical services provided by an ambulatory surgical center shall be reduced by 4.4 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1889 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#010

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

CommunityCARE Program  
Primary Care Providers  
Reimbursement Rate Adjustment  
(LAC 50:I.2913)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the August 20, 2002 Rule governing reimbursement rates in the CommunityCARE Program and amends LAC 50:I.2913 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the CommunityCARE Program in order to increase the reimbursement rates for designated services rendered to CommunityCARE recipients by providers enrolled in the CommunityCARE Program (*Louisiana Register*, Volume 28, Number 8). The department

repromulgated the Rules governing the CommunityCARE Program in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register*, Volume 29, Number 6).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to repeal the August 20, 2002 Rule and to amend the provisions governing reimbursements to primary care providers in the CommunityCARE Program to align these reimbursements with the established fees for primary care services rendered by providers in the Professional Services Program. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the CommunityCARE Program by approximately \$1,009,560 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the August 20, 2002 Rule and amends the provisions governing the reimbursements to CommunityCARE providers to adjust the rates.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part I. Administration

#### Subpart 3. Medicaid Coordinated Care

#### Chapter 29. CommunityCARE§2913. Primary Care Provider Reimbursement

A. The management fee paid to primary care providers in the CommunityCARE Program is \$3 per enrolled recipient per month.

B. Effective for dates of service on or after August 1, 2010, primary care providers enrolled in the CommunityCARE Program shall be reimbursed at the established fees on file for professional services in the Professional Services Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, 29:910 (June 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#011



## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

#### Disproportionate Share Hospital Payments Low Income and Needy Care Collaboration (LAC 50:V.2503 and 2713)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.2503 and adopt §2713 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department amended the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2010 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of uninsured individuals by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective September 19, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that participate in the Low Income and Needy Care Collaboration.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Medical Assistance Program—Hospital Services

#### Subpart 3. Disproportionate Share Hospital Payments

#### Chapter 25. Disproportionate Share Hospital Payment Methodologies

#### §2503. Disproportionate Share Hospital Qualifications

A. - A.5. ...

6. effective September 15, 2006, be a non-rural community hospital as defined in §2701.A.;

7. effective January 20, 2010, be a hospital participating in the Low Income and Needy Care Collaboration as defined in §2713.A.; and

8. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### Chapter 27. Qualifying Hospitals

#### §2713. Low Income and Needy Care Collaboration

##### A. Definitions

*Low Income and Needy Care Collaboration Agreement*—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

B. In order to qualify under this DSH category in any period, a hospital must be party to a Low Income and Needy Care Collaboration Agreement with the Department of Health and Hospitals in that period.

C. DSH payments to Low Income and Needy Care Collaborating Hospitals shall be calculated as follows.

1. In each quarter, the department shall divide hospitals qualifying under this DSH category into two pools. The first pool shall include hospitals that, in addition to qualifying under this DSH category, also qualify for DSH payments under any other DSH category. Hospitals in the first pool shall be eligible to receive DSH payments under §2713.C.2 provisions. The second pool shall include all other hospitals qualifying under this DSH category. Hospitals in the second pool shall be eligible to receive DSH payments under §2713.C.3 provisions.

2. In each quarter, to the extent the department appropriates funding to this DSH category, hospitals that qualify under the provisions of §2713.C.2 shall receive 100 percent of the total amount appropriated by the department for this DSH category.

a. If the net uncompensated care costs of these hospitals exceed the amount appropriated for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing the hospital's net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.2 and multiplying by the amount appropriated by the department.

b. If the amount appropriated for this DSH category exceeds the net uncompensated care costs of all hospitals qualifying under §2713.C.2, payment shall be made up to each hospital's net uncompensated care costs.

c. Any amount available after all distributions are made under §2713.C.2 provisions shall be distributed subject to the provisions in §2713.C.3.

3. In each quarter, to the extent distributions are available, and after all distributions are made under §2713.C.2 provisions, distributions under §2713.C.3 provisions shall be made according to the following terms.

a. If the net uncompensated care costs of all hospitals qualifying for payment under §2713.C.3 provisions exceed the amount available for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.3.

b. If the amount available for payments under §2713.C.3 exceeds the net uncompensated care costs of all qualifying hospitals, payments shall be made up to each

hospital's net uncompensated care costs and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

D. In the event it is necessary to reduce the amount of disproportionate share payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under the provisions of §2713.C.3.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.3 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department will reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. After the reduction in §2713.D has been applied, if it is necessary to further reduce the amount of DSH payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under §2713.C.2.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.2 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department shall reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

F. Qualifying hospitals must submit costs and patient specific data in a format specified by the department. Costs and lengths of stay will be reviewed for reasonableness before payments are made.

G. Payments shall be made on a quarterly basis, however, each hospital's eligibility for DSH and net uncompensated care costs shall be determined on an annual basis.

H. Payments to hospitals qualifying under this DSH category shall be made subsequent to any DSH payments for which a hospital is eligible under another DSH category.

I. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit. The remaining payments shall be redistributed to the other hospitals in accordance with these provisions.

J. If the amount appropriated for this DSH category exceeds the specific DSH limits of all qualifying hospitals, payment will be made up to each hospital's specific DSH limit and the remaining amount shall be used by the

department to make disproportionate share payments under this DSH category in future quarters.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Anthony Keck  
Secretary

1008#095

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment  
Dental Program—Covered Services and Reimbursement  
Rate Reduction (LAC 50:XV.6903 and 6905)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50: XV.6903 and 6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the allocation of additional funds during the 2008 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for dental services covered under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to include coverage of two additional dental procedures, increase the reimbursement fees for designated dental services, discontinue the lifetime service limits for certain endodontic procedures and provide clarification regarding covered services (*Louisiana Register*, Volume 35, Number 9). As a result of a budgetary shortfall in state fiscal year 2010, the bureau promulgated an

Emergency Rule which reduced the reimbursement fees for dental services covered in the EPSDT Dental Program (*Louisiana Register*, Volume 36, Number 2). In July 2010, the department promulgated a Notice of Intent to amend the provisions governing the covered services and reimbursement methodology for the EPSDT Dental Program to include an additional dental procedure (*Louisiana Register*, Volume 36, Number 7).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for EPSDT dental services to further reduce the reimbursement rates. Revised provisions of the July 20, 2010 Notice of Intent will also be incorporated into this Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$5,184,892 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for EPSDT dental services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 5. Early and Periodic Screening,**

##### **Diagnosis and Treatment**

#### **Chapter 69. Dental Services**

##### **§6903. Covered Services**

A. - D. ...

E. Effective August 1, 2010, the prefabricated esthetic coated stainless steel crown-primary tooth dental procedure shall be included in the service package for coverage under the EPSDT Dental Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:175 (February 2003), amended LR 30:252 (February 2004), LR 31:667 (March 2005), LR 33:1138 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1889 (September 2009), amended LR 36:

##### **§6905. Reimbursement**

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement fees for EPSDT dental services shall be reduced to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 73 percent for diagnostic oral evaluation services;
2. 70 percent for the following periodic diagnostic and preventive services:
  - a. radiographs—periapical, first film;
  - b. radiograph—periapical, each additional film;
  - c. radiograph—panoramic film;
  - d. prophylaxis—adult and child;

e. topical application of fluoride, 0-15 years of age (prophylaxis not included); and

f. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age); and

3. 65 percent for the remainder of the dental services.

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for EPSDT dental services shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 69 percent for the following oral evaluation services:

a. periodic oral examination;

b. oral examination—patients under three years of age; and

c. comprehensive oral examination—new patient;

2. 65 percent for the following annual and periodic diagnostic and preventive services:

a. radiographs—periapical, first film;

b. radiograph—periapical, each additional film;

c. radiograph—panoramic film;

d. prophylaxis—adult and child;

e. topical application of fluoride—adult and child (prophylaxis not included); and

f. topical fluoride varnish, therapeutic application for moderate to high caries risk patients (under 6 years of age);

3. 50 percent for the following diagnostic and adjunctive general services:

a. oral/facial images;

b. non-intravenous conscious sedation; and

c. hospital call; and

4. 58 percent for the remainder of the dental services.

F. Removable prosthodontics and orthodontic services are excluded from the August 1, 2010 rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1138 (June 2007), amended LR 34:1032 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1890 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#012

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

#### End Stage Renal Disease Facilities Reimbursement Rate Reduction (LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.6901 and §6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for end stage renal disease (ESRD) facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates for services rendered by end stage renal disease facilities (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for ESRD facilities to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$1,232,296 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for end stage renal disease facilities to reduce the reimbursement rates.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XI. Clinic Services

#### Subpart 9. End Stage Renal Disease Facilities

#### Chapter 69. Reimbursement

#### §6901. Non-Medicare Claims

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement to ESRD facilities shall be reduced by 5 percent of the rates in effect on January 21, 2010.

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1891 (September 2009), amended LR 36:

#### §6903. Medicare Part B Claims

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 5 percent of the rates in effect on January 21, 2010.

E. Effective for dates of service on or after August 1, 2010, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1891 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#013

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

#### Family Planning Clinics—Reimbursement Rate Reduction (LAC 50:XI.3501)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.3501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the

Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Human Resources, Office of Family Services adopted a Rule which established the method of payment for services rendered by mental health clinics, substance abuse clinics and family planning clinics (*Louisiana Register*, Volume 4, Number 5). The provisions governing family planning clinic services were repromulgated in their entirety for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 30, Number 5).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$106,517 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XI. Clinic Services**

#### **Subpart 5. Family Planning**

#### **Chapter 35. Reimbursement**

#### **§3501. Reimbursement Methodology**

A. The reimbursement for family planning clinics is a flat fee for each covered service as specified on the established Medicaid fee schedule. Fee schedule rates are based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

1. - 2. Repealed.

B. Effective for dates of service on or after August 1, 2010, the reimbursement rates for family planning clinic services shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount minus any third party liability coverage.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1008#014

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Family Planning Waiver  
Reimbursement Rate Reduction  
(LAC 50:XXII.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXII.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions that implemented a family planning research and demonstration project under the authority of a Section 1115 waiver (*Louisiana Register*, Volume 32, Number 8). This waiver provides family planning services to women from age 19 through 44 years old with income at or below 200 percent of the federal poverty level. As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which reduced the reimbursement rates paid for family planning waiver services (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for family planning waiver services to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$623,142 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for family planning waiver services to reduce the reimbursement rates.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXII. 1115 Demonstration Waivers**  
**Subpart 3. Family Planning Waiver**

**Chapter 27. Reimbursement**

**§2701. Reimbursement Methodology**

A. ...

B. Effective for dates of service on or after January 22, 2010, the reimbursement rates for services provided in the Family Planning Waiver shall be reduced by 5 percent of the rates in effect on January 21, 2010.

C. Effective for dates of service on or after August 1, 2010, the reimbursement rates for services provided in the Family Planning Waiver shall be reduced by 4.6 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#015

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Home and Community-Based Services Waivers  
Adult Day Health Care  
Reimbursement Rate Reduction  
(LAC 50:XXI.2915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.2915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the

Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver to redefine and clarify the provisions of the waiver relative to the target population, the request for services registry, the comprehensive plan of care, and support coordination services (*Louisiana Register*, Volume 34, Number 10). The October 20, 2008 Rule also amended the provisions governing the reimbursement methodology to reduce the comprehensive ADHC rate paid to providers as a result of adding support coordination as a separate service since these services were traditionally reimbursed as part of the comprehensive ADHC rate. These provisions were repromulgated in December 2009 to correct an error of omission in the publication (*Louisiana Register*, Volume 34, Number 12).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for the Adult Day Health Care Waiver to reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$117,171 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends the provisions governing the Adult Day Health Care Waiver to reduce the reimbursement rates.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXI. Home and Community-Based Services**  
**Waivers**

**Subpart 3. Adult Day Health Care**

**Chapter 29. Reimbursement**

**§2915. Provider Reimbursement**

A. - D.2. ...

E. Effective for dates of service on or after August 1, 2010, the reimbursement rates for ADHC services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2170 (October 2008), repromulgated LR 34:2575 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1008#016

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing and

### Office for Citizens with Developmental Disabilities

#### Home and Community-Based Services Waivers Children's Choice Reimbursement Rate Reduction (LAC 50:XXI.12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.12101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Children's Choice Waiver to clarify the family training service description and the components of this service that qualify for Medicaid payment (*Louisiana Register*, Volume 35, Number 9). The final Rule was published on February 20, 2010 (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Children's Choice Waiver in order to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). The department amended the provisions of the January 22, 2010 Emergency Rule to revise the formatting as a result of the publication of the February 20, 2010 final Rule (*Louisiana Register*, Volume 36, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance program.

Effective September 18, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends

the provisions governing the reimbursement methodology for the Children's Choice Waiver.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXI. Home and Community-Based Services Waivers

##### Subpart 9. Children's Choice

#### Chapter 121. Reimbursement

#### §12101. Reimbursement Methodology

A. - B.4.j.iv. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Children's Choice Waiver services shall be reduced by 4.75 percent of the rates on file as of January 21, 2010.

1. Support coordination services and environmental accessibility adaptations shall be excluded from this rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), amended LR 36:

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

Anthony Keck  
Secretary

1008#096

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

#### Home and Community-Based Services Waivers Children's Choice Service Cap and Reimbursement Rate Reduction (LAC 50:XXI.11301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency

Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the provisions governing the Children's Choice Waiver in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 28, Number 9)*. Each participant in the Children's Choice Waiver has an annual service expenditure cap per plan of care year. The department amended the provisions governing the September 20, 2002 Rule in order to increase the annual service cap (*Louisiana Register, Volume 33, Number 11*). As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Children's Choice Waiver in order to reduce the reimbursement rates (*Louisiana Register, Volume 36, Number 2*). The department also amended the provisions of the Children's Choice Waiver to clarify the family training service description and the components of this service that qualify for Medicaid payment (*Louisiana Register, Volume 36, Number 2*). The department amended the provisions of the January 22, 2010 Emergency Rule to revise the formatting as a result of the publication of the February 20, 2010 final Rule (*Louisiana Register, Volume 36, Number 5*).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the Children's Choice Waiver to reduce the service cap and to further reduce the reimbursement rates paid for waiver services. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$160,973 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the Children's Choice Waiver to reduce the service cap and the reimbursement rates.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXI. Home and Community-Based Services**

**Waivers**

**Subpart 9. Children's Choice**

**Chapter 113. Services**

**§11301. Service Cap**

A. - B. ...

C. Effective August 1, 2010, Children's Choice Waiver services are capped at \$16,660 per individual per plan of care year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of

Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

**Chapter 121. Reimbursement**

**§12101. Reimbursement Methodology**

A. - B.4.j.iv. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Children's Choice Waiver services shall be reduced by 4.75 percent of the rates on file as of January 21, 2010.

1. Support coordination services and environmental accessibility adaptations shall be excluded from this rate reduction.

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for Children's Choice Waiver services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following items shall be excluded from the rate reduction:

- a. ramps;
- b. lifts;
- c. general modifications;
- d. vehicle modifications;
- e. family training services; and
- f. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#017

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Home and Community-Based Services Waivers  
Elderly and Disabled Adults  
Reimbursement Rate Reduction  
(LAC 50:XXI.9101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends LAC 50:XXI.9101 in the Medical



Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the department amended the provisions governing the reimbursement methodology for the Elderly and Disabled Adult (EDA) Waiver to reduce the reimbursement rates paid for designated services (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for EDA Waiver services to further reduce the reimbursement rates for personal assistance and adult day health care services and to adopt provisions governing the reimbursement for adult day health care services. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the EDA Waiver Program by approximately \$1,888,213 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the reimbursement methodology for EDA Waiver services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

## **Part XXI. Home and Community Based Services**

### **Waivers**

#### **Subpart 7. Elderly and Disabled Adults**

### **Chapter 91. Reimbursement**

#### **Subchapter A. General Provisions**

#### **§9101. Reimbursement Methodology**

A. Reimbursement for EDA Waiver services, with the exception of ADHC services, shall be a prospective flat rate for each approved unit of service provided to the recipient. Adult day health care services shall be reimbursed according to the provisions of Subchapter B of this Chapter 91.

B. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for personal assistance services in the EDA Waiver shall be reduced by 2 percent of the rates on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:251 (February 2008), amended by the Department of Health and

Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1893 (September 2009), amended LR 36:

### **Subchapter B. Adult Day Health Care Services Reimbursement**

#### **§9107. General Provisions**

A. Providers of adult day health care services shall be reimbursed a per diem rate for services rendered under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for waiver recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§9109. Cost Reporting**

##### **A. Cost Centers Components**

1. Direct Care Costs. This component reimburses for in-house and contractual direct care staffing and fringe benefits and direct care supplies.

2. Care Related Costs. This component reimburses for in-house and contractual salaries and fringe benefits for activity and social services staff, raw food costs and care related supplies for activities and social services.

3. Administrative and Operating Costs. This component reimburses for in-house or contractual salaries and related benefits for administrative, dietary, housekeeping and maintenance staff. Also included are:

- a. utilities;
- b. accounting;
- c. dietary;
- d. housekeeping and maintenance supplies; and
- e. all other administrative and operating type expenditures.

4. Property. This component reimburses for depreciation, interest on capital assets, lease expenses, property taxes and other expenses related to capital assets.

B. Providers of ADHC services are required to file acceptable annual cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this Section and for which the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the center for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted to the accrual basis at year end are required in the cost report preparation process. The bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

C. The cost reporting forms and instructions developed by the bureau must be used by all facilities participating in the Louisiana Medicaid Program who render ADHC

services. Hospital based and other provider based facilities which use Medicare forms for step down in completing their ADHC Medicaid cost reports must submit copies of the applicable Medicare cost report forms also. All amounts must be rounded to the nearest dollar and must foot and cross foot. Only per diem cost amounts will not be rounded. Cost reports submitted that have not been rounded in accordance with this policy will be returned and will not be considered as received until they are resubmitted.

D. Annual Reporting. Cost reports are to be filed on or before the last day of September following the close of the reporting period. Should the due date fall on a Saturday, Sunday, or an official state or federal holiday, the due date shall be the following business day. The cost report forms and schedules must be filed in duplicate together with two copies of the following documents:

1. a working trial balance that includes the appropriate cost report line numbers to which each account can be traced. This may be done by writing the cost report category and line numbers by each ending balance or by running a trial balance in cost report category and line number order that totals the account;

2. a depreciation schedule. The depreciation schedule which reconciles to the depreciation expense reported on the cost report must be submitted. If the center files a home office cost report, copies of the home office depreciation schedules must also be submitted with the home office cost report. All hospital based facilities must submit two copies of a depreciation schedule that clearly shows and totals assets that are hospital only, ADHC only and shared assets;

3. an amortization schedule(s), if applicable;

4. a schedule of adjustment and reclassification entries;

5. a narrative description of purchased management services and a copy of contracts for managed services, if applicable;

6. for management services provided by a related party or home office, a description of the basis used to allocate the costs to providers in the group and to non-provider activities and copies of the cost allocation worksheet, if applicable. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule; and

7. all allocation worksheets must be submitted by hospital-based facilities. The Medicare worksheets that must be attached by facilities using the Medicare forms for allocation are:

- a. A;
- b. A-6;
- c. A-7 parts I, II and III;
- d. A-8;
- e. A-8-1;
- f. B part 1; and
- g. B-1.

E. Each copy of the cost report must have the original signatures of an officer or center administrator on the certification. The cost report and related documents must be submitted to the address indicated on the cost report instruction form. In order to avoid a penalty for delinquency, cost reports must be postmarked on or before the due date.

F. When it is determined, upon initial review for completeness, that an incomplete or improperly completed

cost report has been submitted, the provider will be notified. The provider will be allowed a specified amount of time to submit the requested information without incurring the penalty for a delinquent cost report. For cost reports that are submitted by the due date, 10 working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. For cost reports that are submitted after the due date, five working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. An exception exists in the event that the due date comes after the specified number of days for submission of the requested information. In these cases, the provider will be allowed to submit the additional requested information on or before the due date of the cost report. If requested additional information has not been submitted by the specified date, a second request for the information will be made. Requested information not received after the second request may not be subsequently submitted and shall not be considered for reimbursement purposes. An appeal of the disallowance of the costs associated with the requested information may not be made. Allowable costs will be adjusted to disallow any expenses for which requested information is not submitted.

G. Accounting Basis. The cost report must be prepared on the accrual basis of accounting. If a center is on a cash basis, it will be necessary to convert from a cash basis to an accrual basis for cost reporting purposes. Particular attention must be given to an accurate accrual of all costs at the year-end for the equitable distribution of costs to the applicable period. Care must be given to the proper allocation of costs for contracts to the period covered by such contracts. Amounts earned although not actually received and amounts owed to creditors but not paid must be included in the reporting period.

H. Supporting Information. Providers are required to maintain adequate financial records and statistical data for proper determination of reimbursable costs. Financial and statistical records must be maintained by the center for five years from the date the cost report is submitted to the Bureau. Cost information must be current, accurate and in sufficient detail to support amounts reported in the cost report. This includes all ledgers, journals, records, and original evidences of cost (canceled checks, purchase orders, invoices, vouchers, inventories, time cards, payrolls, bases for apportioning costs, etc.) that pertain to the reported costs. Census data reported on the cost report must be supportable by daily census records. Such information must be adequate and available for auditing.

I. Employee Record

1. The provider shall retain written verification of hours worked by individual employees.

- a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

- b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

## J. Billing Records

1. The provider shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

a. Records shall clearly detail each charge and each payment made on behalf of the client.

b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.

c. Records shall itemize each billing entry.

d. Records shall show the amount of each payment received and the date received.

2. The provider shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

K. Non-acceptable Descriptions. "Miscellaneous", "other" and "various", without further detailed explanation, are not acceptable descriptions for cost reporting purposes. If any of these are used as descriptions in the cost report, a request for information will not be made and the related line item expense will be automatically disallowed. The provider will not be allowed to submit the proper detail of the expense at a later date, and an appeal of the disallowance of the costs may not be made.

L. Exceptions. Limited exceptions to the cost report filing requirements will be considered on an individual provider basis upon written request from the provider to the Bureau of Health Services Financing, Rate and Audit Review Section. If an exception is allowed, the provider must attach a statement describing fully the nature of the exception for which prior written permission was requested and granted. Exceptions which may be allowed with written approval are as follows.

1. If the center has been purchased or established during the reporting period, a partial year cost report may be filed in lieu of the required 12-month report.

2. If the center experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests for exception must contain a full statement of the cause of the difficulties that rendered timely preparation of the cost report impossible.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

### **§9111. Cost Categories Included in the Cost Report**

#### A. Direct Care (DC) Costs

1. Salaries, Aides—gross salaries of certified nurse aides and nurse aides in training.

2. Salaries, LPNs—gross salaries of nonsupervisory licensed practical nurses and graduate practical nurses.

3. Salaries, RNs—gross salaries of nonsupervisory registered nurses and graduate nurses (excluding director of nursing and resident assessment instrument coordinator).

4. Salaries, Social Services—gross salaries of nonsupervisory licensed social services personnel providing medically needed social services to attain or maintain the highest practicable physical, mental, or psychosocial well being of the residents.

5. Salaries, Activities—gross salaries of nonsupervisory activities/recreational personnel providing an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interest and the physical, mental, and psychosocial well being of the residents.

6. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for direct care employees.

7. Group Insurance, DC—cost of employer's contribution to employee health, life, accident and disability insurance for direct care employees.

8. Pensions, DC—cost of employer's contribution to employee pensions for direct care employees.

9. Uniform Allowance, DC—employer's cost of uniform allowance and/or uniforms for direct care employees.

10. Worker's Comp, DC—cost of worker's compensation insurance for direct care employees.

11. Contract, Aides—cost of aides through contract that are not center employees.

12. Contract, LPNs—cost of LPNs and graduate practical nurses hired through contract that are not center employees.

13. Contract, RNs—cost of RNs and graduate nurses hired through contract that are not center employees.

14. Drugs, Over-the-Counter and Legend—cost of over-the-counter and legend drugs provided by the center to its residents. This is for drugs not covered by Medicaid.

15. Medical Supplies—cost of patient-specific items of medical supplies such as catheters, syringes and sterile dressings.

16. Medical Waste Disposal—cost of medical waste disposal including storage containers and disposal costs.

17. Other Supplies, DC—cost of items used in the direct care of residents which are not patient-specific such as recreational/activity supplies, prep supplies, alcohol pads, betadine solution in bulk, tongue depressors, cotton balls, thermometers, and blood pressure cuffs.

18. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as direct care costs when those costs include allocated overhead.

19. Total Direct Care Costs—sum of the above line items.

#### B. Care Related (CR) Costs

1. Salaries—gross salaries for care related supervisory staff including supervisors or directors over nursing, social service and activities/recreation.

2. Salaries, Dietary—gross salaries of kitchen personnel including dietary supervisors, cooks, helpers and dishwashers.

3. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for care related employees.

4. Group Insurance, CR—cost of employer's contribution to employee health, life, accident and disability insurance for care related employees.

5. Pensions, CR—cost of employer's contribution to employee pensions for care related employees.

6. Uniform Allowance, CR—employer's cost of uniform allowance and/or uniforms for care related employees.

7. Worker's Comp, CR—cost of worker's compensation insurance for care related employees.

8. Barber and Beauty Expense—the cost of barber and beauty services provided to patients for which no charges are made.

9. Consultant Fees, Activities—fees paid to activities personnel, not on the center's payroll, for providing advisory and educational services to the center.

10. Consultant Fees, Nursing—fees paid to nursing personnel, not on the center's payroll, for providing advisory and educational services to the center.

11. Consultant Fees, Pharmacy—fees paid to a registered pharmacist, not on the center's payroll, for providing advisory and educational services to the center.

12. Consultant Fees, Social Worker—fees paid to a social worker, not on the center's payroll, for providing advisory and educational services to the center.

13. Consultant Fees, Therapists—fees paid to a licensed therapist, not on the center's payroll, for providing advisory and educational services to the center.

14. Food, Raw—cost of food products used to provide meals and snacks to residents. Hospital based facilities must allocate food based on the number of meals served.

15. Food, Supplements—cost of food products given in addition to normal meals and snacks under a doctor's orders. Hospital based facilities must allocate food-supplements based on the number of meals served.

16. Supplies, CR—the costs of supplies used for rendering care related services to the patients of the center. All personal care related items such as shampoo and soap administered by all staff must be included on this line.

17. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as care related costs when those costs include allocated overhead.

18. Total Care Related Costs—the sum of the care related cost line items.

19. Contract, Dietary—cost of dietary services and personnel hired through contract that are not employees of the center.

#### C. Administrative and Operating Costs (AOC)

1. Salaries, Administrator—gross salary of administrators excluding owners. Hospital based facilities must attach a schedule of the administrator's salary before allocation, the allocation method, and the amount allocated to the nursing center.

2. Salaries, Assistant Administrator—gross salary of assistant administrators excluding owners.

3. Salaries, Housekeeping—gross salaries of housekeeping personnel including housekeeping supervisors, maids and janitors.

4. Salaries, Laundry—gross salaries of laundry personnel.

5. Salaries, Maintenance—gross salaries of personnel involved in operating and maintaining the physical plant, including maintenance personnel or plant engineers.

6. Salaries, Drivers—gross salaries of personnel involved in transporting clients to and from the center.

7. Salaries, Other Administrative—gross salaries of other administrative personnel including bookkeepers, receptionists, administrative assistants and other office and clerical personnel.

8. Salaries, Owner or Owner/Administrator—gross salaries of all owners of the center that are paid through the center.

9. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for administrative and operating employees.

10. Group Insurance, AOC—cost of employer's contribution to employee health, life, accident and disability insurance for administrative and operating employees.

11. Pensions, AOC—cost of employer's contribution to employee pensions for administration and operating employees.

12. Uniform Allowance, AOC—employer's cost of uniform allowance and/or uniforms for administration and operating employees.

13. Worker's Compensation, AOC—cost of worker's compensation insurance for administration and operating employees.

14. Contract, Housekeeping—cost of housekeeping services and personnel hired through contract that are not employees of the center.

15. Contract, Laundry—cost of laundry services and personnel hired through contract that are not employees of the center.

16. Contract, Maintenance—cost of maintenance services and persons hired through contract that are not employees of the center.

17. Consultant Fees, Dietician—fees paid to consulting registered dietitians.

18. Accounting Fees—fees incurred for the preparation of the cost report, audits of financial records, bookkeeping, tax return preparation of the adult day health care center and other related services excluding personal tax planning and personal tax return preparation.

19. Amortization Expense, Non-Capital—costs incurred for legal and other expenses when organizing a corporation must be amortized over a period of 60 months. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

20. Bank Service Charges—fees paid to banks for service charges, excluding penalties and insufficient funds charges.

21. Dietary Supplies—costs of consumable items such as soap, detergent, napkins, paper cups, straws, etc., used in the dietary department.

22. Dues—dues to one organization are allowable.

23. Educational Seminars and Training—the registration cost for attending educational seminars and training by employees of the center and costs incurred in the provision of in-house training for center staff, excluding owners or administrative personnel.

24. Housekeeping Supplies—cost of consumable housekeeping items including waxes, cleaners, soap, brooms and lavatory supplies.

25. Insurance, Professional Liability and Other—includes the costs of insuring the center against injury and malpractice claims.

26. Interest Expense, Non-Capital and Vehicles—interest paid on short term borrowing for center operations.

27. Laundry Supplies—cost of consumable goods used in the laundry including soap, detergent, starch and bleach.

28. Legal Fees—only actual and reasonable attorney fees incurred for non-litigation legal services related to patient care are allowed.

29. Linen Supplies—cost of sheets, blankets, pillows, gowns, under-pads and diapers (reusable and disposable).

30. Miscellaneous—costs incurred in providing center services that cannot be assigned to any other line item on the cost report. Examples of miscellaneous expense are small equipment purchases, all employees' physicals and shots, nominal gifts to all employees, such as a turkey or ham at Christmas, allowable advertising, and flowers purchased for the enjoyment of the clients. Items reported on this line must be specifically identified.

31. Management Fees and Home Office Costs—the cost of purchased management services or home office costs incurred that are allocable to the provider. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule.

32. Nonemergency Medical Transportation—the cost of purchased nonemergency medical transportation services including, but not limited to, payments to employees for use of personal vehicle, ambulance companies and other transportation companies for transporting patients of the center.

33. Office Supplies and Subscriptions—cost of consumable goods used in the business office such as:

a. pencils, paper and computer supplies;

b. cost of printing forms and stationery including, but not limited to, nursing and medical forms, accounting and census forms, charge tickets, center letterhead and billing forms;

c. cost of subscribing to newspapers, magazines and periodicals.

34. Postage—cost of postage, including stamps, metered postage, freight charges and courier services.

35. Repairs and Maintenance—supplies and services, including electricians, plumbers, extended service agreements, etc., used to repair and maintain the center building, furniture and equipment except vehicles. This includes computer software maintenance.

36. Taxes and Licenses—the cost of taxes and licenses paid that are not included on any other line on Form 6. This includes tags for vehicles, licenses for center staff (including nurse aide re-certifications) and buildings.

37. Telephone and Communications—cost of telephone services, wats lines and fax services.

38. Travel—cost of travel (airfare, lodging, meals, etc.) by the administrator and other authorized personnel to attend professional and continuing educational seminars and meetings or to conduct center business. Commuting expenses and travel allowances are not allowable.

39. Vehicle Expenses—vehicle maintenance and supplies, including gas and oil.

40. Utilities—cost of water, sewer, gas, electric, cable TV and garbage collection services.

41. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital as administrative and operating costs.

42. Total administrative and operating costs.

#### D. Property and Equipment

1. Amortization Expense, Capital—legal and other costs incurred when financing the center must be amortized over the life of the mortgage. Amortization of goodwill is not an allowable cost. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

2. Depreciation—depreciation on the center's buildings, furniture, equipment, leasehold improvements and land improvements.

3. Interest Expense, Capital—interest paid or accrued on notes, mortgages, and other loans, the proceeds of which were used to purchase the center's land, buildings and/or furniture, equipment and vehicles.

4. Property Insurance—cost of fire and casualty insurance on center buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

5. Property Taxes—taxes levied on the center's buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

6. Rent, Building—cost of leasing the center's real property.

7. Rent, Furniture and Equipment—cost of leasing the center's furniture and equipment, excluding vehicles.

8. Lease, Automotive—cost of leases for vehicles used for patient care. A mileage log must be maintained. If a leased vehicle is used for both patient care and personal purposes, cost must be allocated based on the mileage log.

9. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital or state institution as property costs when those costs include allocated overhead.

10. Total property and equipment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### §9113. Allowable Costs

A. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs.

1. These general cost principles include determining whether the cost is:

a. ordinary, necessary, and related to the delivery of care;

b. what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and

c. for goods or services actually provided to the center.

B. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider's reported costs. The Medicare Provider Reimbursement Manual is the final authority for allowable costs unless the department has set a more restrictive policy.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§9115. Nonallowable Costs**

A. Costs that are not based on the reasonable cost of services covered under Medicare and are not related to the care of recipients are considered nonallowable costs.

B. Reasonable cost does not include the following:

1. costs not related to client care;
2. costs specifically not reimbursed under the program;
3. costs that flow from the provision of luxury items or services (items or services substantially in excess or more expensive than those generally considered necessary for the provision of the care);

4. costs that are found to be substantially out of line with other centers that are similar in size, scope of services and other relevant factors;

5. costs exceeding what a prudent and cost-conscious buyer would incur to purchase the goods or services.

C. General nonallowable costs:

1. services for which Medicaid recipients are charged a fee;
2. depreciation of non-client care assets;
3. services that are reimbursable by other state or federally funded programs;
4. goods or services unrelated to client care;
5. unreasonable costs.

D. Specific nonallowable costs (this is not an all inclusive listing):

1. advertising—costs of advertising to the general public that seeks to increase patient utilization of the ADHC center;

2. bad debts—accounts receivable that are written off as not collectible;

3. contributions—amounts donated to charitable or other organizations;

4. courtesy allowances;

5. director's fees;

6. educational costs for clients;

7. gifts;

8. goodwill or interest (debt service) on goodwill;

9. costs of income producing items such as fund raising costs, promotional advertising, or public relations costs and other income producing items;

10. income taxes, state and federal taxes on net income levied or expected to be levied by the federal or state government;

11. insurance, officers—cost of insurance on officers and key employees of the center when the insurance is not provided to all employees;

12. judgments or settlements of any kind;

13. lobbying costs or political contributions, either directly or through a trade organization;

14. non-client entertainment;

15. non-Medicaid related care costs—costs allocated to portions of a center that are not licensed as the reporting ADHC or are not certified to participate in Title XIX;

16. officers' life insurance with the center or owner as beneficiary;

17. payments to the parent organization or other related party;

18. penalties and sanctions—penalties and sanctions assessed by the Centers for Medicare and Medicaid Services, the Internal Revenue Service or the State Tax Commission; insufficient funds charges;

19. personal comfort items; and

20. personal use of vehicles.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§9117. Audits**

A. Each provider shall file an annual center cost report and, if applicable, a central office cost report.

B. The provider shall be subject to financial and compliance audits.

C. All providers who elect to participate in the Medicaid Program shall be subject to audit by state or federal regulators or their designees. Audit selection shall be at the discretion of the department.

1. The department conducts desk reviews of all of the cost reports received and also conducts on-site audits of provider cost reports.

2. The records necessary to verify information submitted to the department on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to the department's audit staff.

D. In addition to the adjustments made during desk reviews and on-site audits, the department may exclude or adjust certain expenses in the cost report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

E. The center shall retain such records or files as required by the department and shall have them available for inspection for five years from the date of service or until all audit exceptions are resolved, whichever period is longer.

F. If a center's audit results in repeat findings and adjustments, the department may:

1. withhold vendor payments until the center submits documentation that the non-compliance has been resolved;

2. exclude the provider's cost from the database used for rate setting purposes; and

3. impose civil monetary penalties until the center submits documentation that the non-compliance has been resolved.

G. If the department's auditors determine that a center's financial and/or census records are unauditible, the vendor payments may be withheld until the center submits auditible records. The provider shall be responsible for costs incurred by the department's auditors when additional services or procedures are performed to complete the audit.

H. Vendor payments may also be withheld under the following conditions:

1. a center fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter from the department; or

2. a center fails to respond satisfactorily to the department's request for information within 15 days after receiving the department's notification letter.

I. The provider shall cooperate with the audit process by:

1. promptly providing all documents needed for review;

2. providing adequate space for uninterrupted review of records;

3. making persons responsible for center records and cost report preparation available during the audit;

4. arranging for all pertinent personnel to attend the closing conference;

5. insuring that complete information is maintained in client's records;

6. developing a plan of correction for areas of noncompliance with state and federal regulations immediately after the exit conference time limit of 30 days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§9119. Exclusions from the Database**

A. The following providers shall be excluded from the database used to calculate the rates:

1. providers with disclaimed audits; and

2. providers with cost reports for periods other than a 12-month period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§9121. Provider Reimbursement**

A. Cost Determination Definitions

*Adjustment Factor*—computed by dividing the value of the index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

*Base Rate*—calculated in accordance with §9121.B.5, plus any base rate adjustments granted in accordance with §9121.B.7 which are in effect at the time of calculation of new rates or adjustments.

*Base Rate Components*—the base rate is the summation of the following:

a. direct care;

b. care related costs;

c. administrative and operating costs; and

d. property costs.

*Indices*—

a. CPI, All Items—the Consumer Price Index for All Urban Consumers-South Region (All Items line) as published by the United States Department of Labor.

b. CPI, Medical Services—the Consumer Price Index for All Urban Consumers-South Region (Medical

Services line) as published by the United States Department of Labor.

B. Rate Determination

1. The base rate is calculated based on the most recent audited or desk reviewed cost for all ADHC providers filing acceptable full year cost reports.

2. Audited and desk reviewed costs for each component are ranked by center to determine the value of each component at the median.

3. The median costs for each component are multiplied in accordance with §9121.B.4 then by the appropriate economic adjustment factors for each successive year to determine base rate components. For subsequent years, the components thus computed become the base rate components to be multiplied by the appropriate economic adjustment factors, unless they are adjusted as provided in §9121.B.7 below. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the state legislature allocates funds for this purpose. The inflationary adjustment shall be made prorating allocated funds based on the weight of the rate components.

4. The inflated median shall be increased to establish the base rate median component as follows.

a. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

b. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

c. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

5. At least every three years, audited and desk reviewed cost report items will be compared to the rate components calculated for the cost report year to insure that the rates remain reasonably related to costs.

6. Formulae. Each median cost component shall be calculated as follows.

a. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

i. For dates of service on or after February 9, 2007, and extending until the ADHC rate is rebased using a cost report that begins after July 1, 2007, the center-specific direct care rate will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

b. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two

midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

c. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI-All Items index for December of the year proceeding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

d. Property Cost Component. The property per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

7. Interim Adjustments to Rates. If an unanticipated change in conditions occurs that affects the cost of at least 50 percent of the enrolled ADHC providers by an average of five percent or more, the rate may be changed. The department will determine whether or not the rates should be changed when requested to do so by 25 percent or more of the enrolled providers, or an organization representing at least 25 percent of the enrolled providers. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. The department may initiate a rate change without a request to do so. Changes to the rates may be temporary adjustments or base rate adjustments as described below.

a. Temporary Adjustments. Temporary adjustments do not affect the base rate used to calculate new rates.

i. Changes Reflected in the Economic Indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic indices, such as a change in the minimum wage, a change in FICA or a utility rate change, occur after the end of the period covered by the indices, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

ii. Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay, such as a change in certification standards mandating additional equipment or furnishings. Such adjustments shall be subject to the bureau's review and approval of costs prior to reimbursement.

b. Base Rate Adjustment. A base rate adjustment will result in a new base rate component value that will be used to calculate the new rate for the next fiscal year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

8. Provider Specific Adjustment. When services required by these provisions are not made available to the recipient by the provider, the department may adjust the prospective payment rate of that specific provider by an

amount that is proportional to the cost of providing the service. This adjustment to the rate will be retroactive to the date that is determined by the department that the provider last provided the service and shall remain in effect until the department validates, and accepts in writing, an affidavit that the provider is then providing the service and will continue to provide that service.

C. Cost Settlement. The direct care cost component shall be subject to cost settlement. The direct care floor shall be equal to 90 percent of the median direct care rate component trended forward for direct care services (plus 90 percent of any direct care incentive added to the rate). The Medicaid Program will recover the difference between the direct care floor and the actual direct care amount expended. If a provider receives an audit disclaimer, the cost settlement for that year will be based on the difference between the direct care floor and the lowest direct care per diem of all facilities in the most recent audited and/or desk reviewed database trended forward to the rate period related to the disclaimer.

D. Support Coordination Services Reimbursement. Support coordination services previously provided by ADHC providers and included in the rate, including the Minimum Data Set Home Care (MDS/HC), the social assessment, the nursing assessment, the CPOC and home visits will no longer be the responsibility of the ADHC provider. Support coordination services shall be provided as a separate service covered in the waiver. As a result of the change in responsibilities, the rate paid to providers shall be adjusted accordingly.

1. Effective January 1, 2009, the rate paid to ADHC providers on December 31, 2008 shall be reduced by \$4.67 per day which is the cost of providing support coordination services separately.

2. This rate reduction will extend until such time that the ADHC provider's rate is rebased using cost reports that do not reflect the cost of delivering support coordination services.

E. Effective for dates of service on or after August 1, 2010, the reimbursement rate for ADHC services provided in the EDA Waiver shall be reduced by 2 percent of the rates in effect on July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#018



## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Waivers  
New Opportunities Waiver  
Reimbursement Rate Reduction  
(LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) to reduce the reimbursement rates paid for NOW services (*Louisiana Register*, Volume 36, Number 6).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for the New Opportunities Waiver to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the New Opportunities Waiver by approximately \$6,062,392 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for the New Opportunities Waiver to further reduce the reimbursement rates.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXI. Home and Community Based Services Waivers

#### Subpart 11. New Opportunities Waiver

#### Chapter 143. Reimbursement

#### §14301. Reimbursement Methodology

A. - I. ...

J. Effective for dates of service on or after August 1, 2010, the reimbursement rates for New Opportunity Waiver

services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. environmental accessibility adaptations;
- b. specialized medical equipment and supplies;
- c. personal emergency response systems;
- d. one time transitional expenses; and
- e. individualized and family support services—

night and shared night.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), amended LR 36:1247 (June 2010), LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#019

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Waivers  
Residential Options Waiver  
(LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapters 161-169 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from institutional care (*Louisiana Register*, Volume 33, Number

11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (Louisiana Register, Volume 36, Number 4). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget for waiver participants and to reduce the reimbursement rates for waiver services (Louisiana Register, Volume 36, Number 8). The department now proposes to amend the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule. This action is being taken to ensure that these provisions are appropriately adopted into the Louisiana Administrative Code.

Effective August 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions of the May 1, 2010 Emergency Rule governing the Residential Options Waiver.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

## **Part XXI. Home and Community Based Services**

### **Waivers**

#### **Subpart 13. Residential Options Waiver**

#### **Chapter 161. General Provisions**

#### **§16101. Introduction**

A. The Residential Options Waiver (ROW), a 1915(c) home and community-based services (HCBS) waiver, is designed to enhance the long-term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for persons with developmental disabilities (ICF/DD) level of care.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16103. Program Description**

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options which best meet the individual's needs and preferences;

2. meets the highest standards of quality and national best practices in the provision of services; and

3. ensures health and safety through a comprehensive system of participant safeguards.

4. Repealed.

C. All ROW services are accessed through the support coordination agency of the participant's choice.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the participant's support coordinator.

D. All services must be prior authorized and delivered in accordance with the approved POC.

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and will not exceed the approved ICF/DD ICAP rate established for that individual.

1. When the department determines that it is necessary to adjust the ICF/DD ICAP rate, each waiver participant's annual service budget shall be adjusted to ensure that the participant's total available expenditures do not exceed the approved ICAP rate.

F. No reimbursement for ROW services shall be made for a participant who is admitted to an inpatient setting.

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16105. Participant Qualifications**

A. In order to qualify for services through the ROW, an individual must be offered a ROW opportunity and meet all of the following criteria:

1. have a developmental disability as specified in the Louisiana Developmental Disability Law and determined through the developmental disabilities system entry process;

2. meet the requirements for an ICF/DD level of care which requires active treatment for developmental disabilities under the supervision of a qualified developmental disabilities professional;

3. meet the financial eligibility requirements for the Louisiana Medicaid Program;

4. be a resident of Louisiana; and

5. be a citizen of the United States or a qualified alien.

B. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

1 - 3.c. Repealed.

C. Justification must be documented in the OCDD approved POC that the ROW services are appropriate, cost effective and represent the least restrictive environment for the individual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 36:

#### **§16106. Money Follows the Person Rebalancing Demonstration**

A. The Money Follows the Person (MFP) Rebalancing Demonstration is a federal demonstration grant awarded by the Centers for Medicare and Medicaid Services to the

Department of Health and Hospitals. The MFP demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

1. For the purposes of these provisions, a qualified institution is a nursing facility, hospital, or Medicaid enrolled intermediate care facility for people with developmental disabilities (ICF/DD).

B. Participants must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Participants with a developmental disability must:

a. occupy a licensed, approved Medicaid enrolled nursing facility, hospital or ICF/DD bed for at least three consecutive months; and

b. be Medicaid eligible, eligible for state developmental disability services, and meet an ICF/DD level of care.

2. The participant or his/her responsible representative must provide informed consent for both transition and participation in the demonstration.

C. Participants in the demonstration are not required to have a protected date on the developmental disabilities request for services registry.

D. All other ROW provisions apply to the Money Follows the Person Rebalancing Demonstration.

E. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 36:

#### **§16107. Programmatic Allocation of Waiver Opportunities**

A. ROW opportunities will be offered to individuals in the following targeted population groups:

1. children:

a. who are from birth through age 18;

b. who reside in a nursing facility;

c. who meet the high-need requirements for a nursing facility level of care as well as the ROW level of care requirements;

d. who are participants in the MFP Rebalancing Demonstration; and

e. whose parents or legal guardians wish to transition them to a home and community-based residential services waiver; and

2. individuals who reside in a Medicaid enrolled ICF/DD and wish to transition to a home and community-based residential services waiver through a voluntary ICF-DD bed conversion process.

B. ROW opportunities will be offered to:

1. children who are currently residing in a Medicaid enrolled nursing facility and will be participating in the MFP Rebalancing Demonstration; and

2. individuals who are currently residing in a Medicaid enrolled facility that goes through the ICF-DD bed conversion process.

C. After an individual is offered a ROW opportunity, the individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for

both the financial eligibility and medical certification process for the level of care determination.

1. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing.

a. - c. Repealed.

2. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified.

C.3. - E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16109. Admission Denial or Discharge Criteria**

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

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

2. The individual does not meet the requirements for an ICF/DD level of care.

3. The individual does not meet developmental disability system eligibility.

4. The individual is incarcerated or under the jurisdiction of penal authorities, courts or state juvenile authorities.

5. The individual resides in another state.

6. The health and welfare of the individual cannot be assured through the provision of ROW services.

7. The individual fails to cooperate in the eligibility determination process or in the development of the POC.

8. Repealed.

B. Participants shall be discharged from the ROW Program if any of the following conditions are determined:

1. loss of Medicaid financial eligibility as determined by the Medicaid Program;

2. loss of eligibility for an ICF/DD level of care;

3. loss of developmental disability system eligibility;

4. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;

5. change of residence to another state ;

6. admission to an ICF/DD or nursing facility with the intent to stay and not to return to waiver services;

7. the health and welfare of the participant cannot be assured through the provision of ROW services in accordance with the participant's approved POC;

8. the participant fails to cooperate in the eligibility renewal process or the implementation of the approved POC, or the responsibilities of the ROW participant; or

9. continuity of stay for consideration of Medicaid eligibility under the special income criteria is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days;

a. continuity of stay is not considered to be interrupted if the participant is admitted to a hospital, nursing facility or ICF/DD;

i. the participant shall be discharged from the ROW if the treating physician documents that the institutional stay will exceed 90 days;

10. continuity of services is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

## **Chapter 163. Covered Services**

### **§16301. Assistive Technology and Specialized Medical Equipment and Supplies**

A. Assistive technology and specialized medical equipment and supplies (AT/SMES) are equipment, devices, controls, appliances, supplies and services which enable the participant to:

1. have life support;
2. address physical conditions;
3. increase ability to perform activities of daily living;
4. increase, maintain or improve ability to function more independently in the home and/or community; and
5. increase ability to perceive, control or communicate.

B. AT/SMES services provided through the ROW include the following services:

1. evaluation of participant needs;
2. customization of the equipment or device;
3. coordination of necessary therapies, interventions or services;
4. training or technical assistance on the use and maintenance of the equipment or device for the participant or, where appropriate, his/her family members, legal guardian or responsible representative;
5. training or technical assistance, when appropriate, for professionals, other service providers, employers, or other individuals who are substantially involved in the participant's major life functions;
6. all service contracts and warranties included in the purchase of the item by the manufacturer; and
7. equipment or device repair and replacement of batteries and other items that contribute to ongoing maintenance of the equipment or device;

a. separate payment will be made for repairs after expiration of the warranty only when it is determined to be cost effective.

C. Approval of AT/SMES services through ROW is contingent upon the denial of a prior authorization request for the item as a Medicaid State Plan service and demonstration of the direct medical, habilitative or remedial benefit of the item to the participant.

1. Items reimbursed in the ROW may be in addition to any medical equipment and supplies furnished under the Medicaid State Plan.

1.a. - 7. Repealed.

D. ...

E. Service Exclusions

1. Assistive technology devices and specialized equipment and supplies that are of general utility or maintenance and have no direct medical or remedial benefit to the participant are excluded from coverage.

2. Any equipment, device, appliance or supply that is covered and has been approved under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage.

3. For adults over the age of 20 years, specialized chairs, whether mobile or travel, are not covered.

F. Provider Participation Requirements. Providers of AT/SMES services must meet the following participation requirements. The provider must:

1. be enrolled in the Medicaid Program as a assistive devices or durable medical equipment provider and must meet all applicable vendor standards and requirement for manufacturing, design and installation of technological equipment and supplies;

2. furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies; and

3. provide documentation of individual employees' training and experience with the application, use, fitting and repair of the equipment or devices which they propose to sell or repair;

a. upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### **§16303. Community Living Supports**

A. Community living supports (CLS) are services provided to assist participants to achieve and maintain the outcomes of increased independence, productivity and inclusion in the community by utilizing teaching and support strategies. CLS may be furnished through self-direction or through a licensed, enrolled agency.

B. Community living supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training;

a. Repealed.

3. cognitive, communication tasks, and adaptive skills training; and

a. Repealed.

4. development of appropriate, positive behaviors.

a. - b. Repealed.

C. ...

D. Community living supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. In order for CLS services to be shared, the following conditions must be met:

1. an agreement must be reached among all involved participants or their legal guardians regarding the provisions of shared CLS services;

2. the health and welfare of each participant must be assured through the provision of shared services;

3. services must be reflected in each participant's approved plan of care and based on an individual-by-individual determination; and

4. a shared rate must be billed.

E. - E.1. ...

2. Routine care and supervision that is normally provided by the participant's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered.

3. CLS services may not be furnished in a home that is not leased or owned by the participant or the participant's family.

4. Participants may not live in the same house as CLS staff.

5. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered.

6. Community living supports shall not be provided in a licensed respite care facility.

a. - d. Repealed.

7. Community living supports services are not available to individuals receiving the following services:

a. shared living;

b. home host; or

c. companion care.

8. Community living supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

a. day habilitation;

b. prevocational;

c. supported employment;

d. respite-out of home services; or

e. transportation-community access.

F. - F.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### **§16305. Companion Care**

A. Companion care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion provides services in the participant's home and lives with the participant as a roommate. Companion care services may be furnished through self-direction or through a licensed provider agency as outlined in the participant's POC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the participant's POC; and

2. community integration and coordination of transportation services, including medical appointments.

3. Repealed.

B. Companion care services can be arranged by licensed providers who hire companions, or services can be self-directed by the participant. The companion is a principal

care provider who is at least 18 years of age who lives with the participant as a roommate and provides services in the participant's home.

1. - 2. Repealed.

### **C. Provider Responsibilities**

1. The provider organization shall develop a written agreement as part of the participant's POC which defines all of the shared responsibilities between the companion and the participant. The written agreement shall include, but is not limited to:

a. - c. ...

2. Revisions to this agreement must be facilitated by the provider and approved by the support team. Revisions may occur at the request of the participant, the companion, the provider or other support team members.

3. The provider is responsible for performing the following functions which are included in the daily rate:

a. arranging the delivery of services and providing emergency services as needed;

b. making an initial home inspection to the participant's home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the participant's POC; and

d. providing 24-hour oversight and supervision of the companion care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the participant.

a. - b. Repealed.

### **D. Companion Responsibilities**

1. The companion is responsible for:

a. participating in and abiding by the POC;

b. ...

c. purchasing his/her own food and personal care items.

### **E. Service Limits**

1. The provider agency must provide relief staff for scheduled and unscheduled absences, available for up to 360 hours (15 days) as authorized by the POC. Relief staff for scheduled and unscheduled absences is included in the provider agency's rate.

### **F. Service Exclusions**

1. Companion care is not available to individuals receiving the following services:

a. respite care service-out of home;

b. shared living;

c. community living supports; or

d. host home.

2. - 2.d.Repealed.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### **§16307. Day Habilitation Services**

A. Day habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an

individual's home. These activities shall promote independence, autonomy and assist the participant with developing a full life in his community. The primary focus of Day Habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the participant.

2. ...

3. As an individual develops new skills, training should progress along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day habilitation services shall:

1. focus on enabling participants to attain maximum skills;

2. be coordinated with any physical, occupational or speech therapies included in the participant's POC;

3. - 4. ...

a. services are based on a one-half day unit of service and on time spent at the service site by the participant;

b. the one-half day unit of service requires a minimum of 2.5 hours;

c. two one-half day units may be billed if the participant spends a minimum of five hours at the service site;

d. any time less than 2.5 hours of services is not billable or payable; and

e. no rounding up of hours is allowed.

C. The provider is responsible for all transportation from the agency to all work sites related to the provision of service.

1. Transportation to and from the service site is offered and billable as a component of the Day Habilitation service; however, transportation is payable only when a Day Habilitation service is provided on the same day.

2. - 4.c. Repealed.

D. Participants may receive more than one type of vocational/habilitative service per day as long as the service and billing criteria are followed and as long as requirements for the minimum time spent on site are adhered to.

E. Service Exclusions

1. Time spent traveling to and from the day habilitation program site shall not be included in the calculation of the total number of day habilitation service hours provided per day.

a. Travel training for the purpose of teaching the participant to use transportation services may be included in determining the total number of service hours provided per day, but only for the period of time specified in the POC.

2. Transportation-community access will not be used to transport ROW participants to any day habilitation services.

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan; or

c. respite care services—out of home.

F. Provider Qualifications. Providers must be licensed as an adult day care agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### §16309. Dental Services

A. Dental services are available to adult participants over the age of 21 as a component of the ROW. Covered dental services include:

1. diagnostic services;
2. preventative services;
3. restorative services;
4. endodontic services;
5. periodontal services;
6. removable prosthodontics services;
7. maxillofacial prosthetics services;
8. fixed prosthodontics services;
9. oral and maxillofacial surgery;
10. orthodontic services; and
11. adjunctive general services.

B. Service Exclusion. Participants must first access dental services covered under the Medicaid State Plan before utilizing dental services through the Residential Options Waiver.

C. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the specific dental services in all specialty areas provided to the participant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### §16311. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are physical adaptations to the participant's home or vehicle which must be specified in the POC as necessary to enable the participant to integrate more fully into the community and to ensure his/her health, welfare and safety.

1. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the participant.

B. Environmental adaptation services to the home and vehicle include the following:

1. assessments to determine the types of modifications that are needed;

2. training the participant and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;

3. repair of all equipment and/or devices, including replacement of batteries and other items that contribute to the ongoing maintenance of the adaptation(s); and

4. all service contracts and warranties which the manufacturer includes in the purchase of the item.

C. In order to accommodate the medical equipment and supplies necessary to assure the welfare of the participant, home accessibility adaptations may include the following:

1. installation of ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems.

D. Home accessibility adaptations may be applied to rental or leased property only under the following conditions:

1. the participant is renting or leasing the property; and
2. written approval is obtained from the landlord and OCDD.

E. - F.4.g. ...

5. Home modifications shall not be paid for in the following residential services:

- a. host home; or
- b. shared living settings which are provider owned or leased.

G. Vehicle adaptations are modifications to an automobile or van that is the waiver participant's primary means of transportation in order to accommodate his/her special needs.

1. The modifications may include the installation of a lift or other adaptations to make the vehicle accessible to the participant or for him/her to drive.

2. Repealed.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to:
  - a. adapt vehicles that are owned or leased by paid caregivers or providers of waiver services; or
  - b. to purchase or lease a vehicle.
2. - 4. ...

I. Provider Responsibilities

1. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the POC year in which it was approved.

a. - b. Repealed.

2. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modifications, must be obtained and submitted for prior authorization.

a. Repealed.

3. Vehicle modifications must meet all applicable standards of manufacture, design and installation for all adaptations to the vehicle.

4. Upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates from manufacturers.

J. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor.

a. In addition, these providers must:

- i. meet the applicable state and/or local requirements governing their licensure or certification; and

ii. comply with the applicable state and local building or housing code standards governing home modifications.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### **§16313. Host Home**

A. Host home services assist participants in meeting their basic adaptive living needs and offer direct support where required. Participants are afforded a welcoming, safe and nurturing family atmosphere in a family home environment in which the participant may receive supports, services and training in accordance with the POC. Host home services take into account compatibility, including individual interests, age, needs for privacy, supervision and support needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required as a part of the participant's POC.

1. Repealed.

B. Host home services include:

1. assistance with the activities of daily living and adaptive living needs;
2. assistance to develop leisure interests and daily activities in the home setting;
3. assistance to develop relationships with other members of the household;
4. supports in accessing community services, activities and pursuing and developing recreational and social interests outside the home; and
5. teaching community living skills to achieve participant's goals concerning community and social life as well as to maintain contacts with biological families and natural supports.

C. Host home provider agencies oversee and monitor the Host Home contractor to ensure the availability, quality, and continuity of services as specified in the ROW manual. Host Home provider agencies are responsible for the following functions:

1. arranging for a host home;
2. making an initial and periodic inspections of the host home; and
3. providing 24-hour oversight and supervision of Host Home services including providing emergency services and back-up for the scheduled and nonscheduled absences of the contractor.

a. Repealed.

D. Host home contractors are responsible for:

1. assisting with the development of the participant's POC and complying with the provisions of the plan;
  2. maintaining and providing data to assist in the evaluation of the participant's personal goals;
  3. maintaining adequate records to substantiate service delivery and producing such records upon request;
  4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the Host Home setting; and
  5. immediately reporting to the department and applicable authorities any major issues or concerns related to the participant's safety and well-being.
6. - 10. Repealed.

E. ...

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult participant's POC based on medical, health and behavioral needs, age, capabilities and any special needs.

F.1. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving host home services:

2.a. - 3....

J. Provider Qualifications

1. All agencies must:
  - a. have experience in delivering therapeutic services to persons with developmental disabilities;
  - b. have staff who have experience working with persons with developmental disabilities;
  - c. screen, train, oversee and provide technical assistance to the host home contractors in accordance with OCDD requirements, including the coordination of an array of medical, behavioral and other professional services appropriate for persons with developmental disabilities; and
  - d. provide on-going assistance to the Host Home contractors so that all HCBS requirements are met.

2. Agencies serving children must be licensed by the Department of Social Services as a Class "A" Child Placing Agency.

3. Agencies serving adults must be licensed by the Department of Health and Hospitals as a provider of substitute family care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### §16315. Intensive Community Supports

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2448 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### §16317. Nursing Services

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the State's Nurse Practice Act. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program covered under the Medicaid State Plan.

1. The services require an individual nursing service plan and must be included in the plan of care.

2. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

3. Repealed.

B. Nursing consulting services include assessments and health related training and education for participants and caregivers.

1. - 2. ...

3. The health related training and education service is the only nursing service which can be provided to more than one participant simultaneously. The cost of the service is allocated equally among all participants.

C. Service Requirement. Participants over the age of 21 years must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or, if under the ROW Shared Living Conversion Model, be an enrolled Shared Living Services agency with a current, valid license as a Supervised Independent Living agency.

E. Staffing Requirements

1. ...

2. The RN or the LPN must possess one year of service delivery experience to persons with developmental disabilities defined under the following criteria:

a. full-time experience gained in advanced and accredited training programs (i.e. masters or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time nursing experience in specialized service/treatment settings for persons with developmental disabilities (i.e. intermediate care facilities for persons with developmental disabilities);

c. paid, full-time nursing experience in multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis – mental illness and developmental disabilities); or

d. paid, full-time nursing experience in specialized educational, vocational and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

3. Two years of part-time experience with a minimum of 20 hours per week may be substituted for one year of full-time experience.

4. The following activities do not qualify for the required experience:

a. volunteer nursing experience; or



b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16319. One Time Transitional Services**

A. One-time transitional services are one-time, set-up services to assist individuals in making the transition from an ICF/DD to their own home or apartment in the community of their choice.

1. - 1.d.iii. Repealed.

B. Allowable transitional expenses may include:

1. nonrefundable security deposits that do not include rental payments;

2. set-up fees for utilities;

3. essential furnishings to establish basic living arrangements, including:

a. bedroom and living room furniture;

b. table and chairs;

c. window blinds; and

d. food preparation items and eating utensils;

4. set-up/deposit fee for telephone service;

5. moving expenses; and

6. health and safety assurances including:

a. pest eradication; or

b. one-time cleaning prior to occupancy.

C. Service Limits

1. One time transitional expenses are capped at \$3,000 per person over a participant's lifetime.

D. Service Exclusions

1. One-time transitional services may not be used to pay for:

a. housing, rent or refundable security deposits; or

b. furnishings or setting up living arrangements that are owned or leased by a waiver provider.

2. One-time transitional services are not available to participants who are receiving host home services.

3. One-time transitional services are not available to participants who are moving into a family member's home.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16321. Personal Emergency Response System (PERS)**

A. Personal Emergency Response System (PERS) is a system connected to the participant's telephone that incorporates an electronic device which enables the participant to secure help in an emergency. The device can be worn as a portable "help" button and when activated, a response center is contacted.

B. Participant Qualifications. PERS services are available to individuals who:

1. ...

2. are unable to use other communication systems due to experiencing difficulty in summoning emergency assistance; or

3. ...

C. PERS services includes rental of the electronic device, initial installation, training the participant to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for shared living services.

E. Provider Qualifications

1. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems.

2. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2249 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16323. Prevocational Services**

A. Prevocational services are activities designed to assist participants in acquiring and maintaining basic work-related skills necessary to acquire and retain meaningful employment. Services should include real and simulated employment tasks to assist in determining their vocational potential. Overall goals include regular community inclusion and development of work skills and habits to improve the participant's employability. Services must be reflective of the participant's POC and focused toward habilitation rather than teaching a specific job skill.

1. - 2.b....

B. In the event participants are compensated while receiving prevocational services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If participants are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. - c. ...

C. The provider is responsible for all transportation from the agency to all vocational sites related to provision of services.

1. Travel training may be included in determining the number of hours of services provided per day for the period of time specified in the participant's POC.

a. Repealed.

D. Service Limits

1. Services shall be limited to no more than eight hours per day, five days per week.

2. Services are based on a one-half day unit of service and time spent at the service site by the participant:

a. the one-half day unit of service requires a minimum of 2.5 hours at the service site by the participant;

b. two one-half day units may be billed in one day if the participant spends a minimum of five hours at the service site;

c. any time less than 2.5 hours of service is not billable or payable; and

d. no rounding up of hours is allowed.

3. Participants may receive more than one vocational/habilitative service per day as long as the billing criteria are followed for each service and the requirements for the minimum time spent on site are adhered to.

3.a. - 5.a. Repealed.

#### E. Service Exclusions

1. Prevocational services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

2. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan; or

c. respite care services—out of home.

3. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

4. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

5. Transportation-community access shall not be used to transport ROW participants to any prevocational services.

F. Provider Qualifications. Providers must have a current, valid license as an adult day care center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### §16325. Professional Services

A. Professional services are direct services to participants, based on need, that may be utilized to increase the individual's independence, participation and productivity in the home, work and community. Service intensity, frequency and duration will be determined by individual need. Professional services must be delivered with the participant present and in accordance with approved POC.

1. - 8.a. Repealed.

B. Professional services include the services provided by the following licensed professionals:

1. occupational therapist;

2. physical therapist;

3. speech therapist;

4. registered dietician;

5. social worker; and

6. psychologist.

C. Professional services may be utilized to:

1. perform assessments and/or re-assessments specific to professional disciplines to accomplish the desired

outcomes for the participant and to provide recommendations, treatment, and follow-up;

a. - b. Repealed.

2. provide training or therapy to a participant and/or natural and formal supports necessary to either develop critical skills that may be self-managed by the participant or maintained according to the participant's needs;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

a. Repealed.

4. provide consultative services and recommendations;

5. provide necessary information to the participant, family, caregivers, and/or team to assist in planning and implementing services or treatment;

6. provide caregiver counseling for the participant's natural, adoptive, foster, or host family members in order to develop and maintain healthy, stable relationships among all caregivers, including family members, to support meeting the needs of the participant;

a. emphasis is placed on the acquisition of coping skills by building upon family strengths; and

b. services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver; and

7. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider;

a. services are intended to maximize the individual's nutritional health.

NOTE: Psychologists and social workers will provide supports and services consistent with person-centered practices and Guidelines for Support Planning.

#### D. Service Exclusions

1. Professional services may only be furnished and reimbursed through ROW when the services are medically necessary, or have habilitative or remedial benefit to the participant.

a. Repealed.

2. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

a. - d. Repealed.

#### E. Provider Qualifications

1. Enrollment of Individual Practitioners. Individual practitioners who enroll as providers of professional services must:

a. have a current, valid license from the appropriate governing board of Louisiana for that profession; and

b. possess one year of service delivery experience with persons with developmental disabilities;

c. in addition, the specific service delivered must be consistent with the scope of the license held by the professional.

2. Provider agency enrollment of professional services.

a. The following provider agencies may enroll to provide professional services:

- i. a Medicare certified free-standing rehabilitation center;
- ii. a licensed home health agency;
- iii. a supervised independent living agency licensed by the department to provide shared living services; or

iv. a substitute family care agency licensed by the department to provide host home services.

b. Enrolled provider agencies may provide professional services by one of the following methods:

- i. employing the professionals; or
- ii. contracting with the professionals.

c. Provider agencies are required to verify that all professionals employed by or contracted with their agency meet the same qualifications required for individual practitioners as stated in §16325.E.1.a-c.

3. All professionals delivering professional services must meet the required one year of service delivery experience as defined by the following:

a. full-time experience gained in advanced and accredited training programs (i.e. master's or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time experience in specialized service/treatment settings for persons with developmental disabilities (i.e. ICFs/DD);

c. paid, full-time experience multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis—mental illness and developmental disability); or

d. paid, full-time experience in specialized educational, vocational, and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program);

e. two years of part-time experience with a minimum of 20 hours per week of the qualifying work experience activities may be substituted for one year of full-time experience.

4. The following activities do not qualify for the professional's required service delivery experience:

- a. volunteer experience; or
- b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

**§16327. Respite Care Services—Out of Home**

A. Respite care services—out of home are supports and services provided for the relief of those unpaid caregivers who normally provide care to participants who are unable to care for themselves. These services are furnished on a short-term basis in a licensed respite care center.

1. A licensed respite care facility shall insure that community activities are available to the participant in accordance with the approved POC, including transportation to and from these activities.

- a. ...

2. While receiving respite care services, the participant's routine is maintained in order to attend school, school activities, or other community activities that he/she would typically participate in if not in the center-based respite facility.

**B. Service Limits**

1. Respite care services are limited to 720 hours per participant per POC year.

2. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

**C. Service Exclusions**

1. ...

2. Respite care services—Out of Home may not be billed for participants receiving the following services:

- a. shared living;
- b. companion care; or
- c. host home.
- d. Repealed.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center issued by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

**§16329. Shared Living Services**

A. Shared living services assist the participant in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the participant and developed in accordance with his/her goals and wishes with regard to compatibility, interests, age and privacy in the shared living setting.

1. A shared living services provider delivers supports which include:

- a. 24-hour staff availability;
- b. assistance with activities of daily living included in the participant's POC;
- c. a daily schedule;
- d. health and welfare needs;
- e. transportation;
- f. any non-residential ROW services delivered by the shared living services provider; and
- g. other responsibilities as required in each participant's POC.

2. - 3. Repealed.

B. An ICF/DD may elect to permanently relinquish its ICF/DD license and all of its Medicaid Facility Need Review approved beds from the total number of Certificate of Need (CON) beds for that home and convert it into a shared living waiver home or in combination with other ROW residential options as deemed appropriate in the approved conversion agreement.

1. In order to convert, provider request must be approved by the department and by OCDD.

2. ICF/DD residents who choose transition to a shared living waiver home must also agree to conversion of their residence.

3. If choosing ROW services, persons may select any ROW services and provider(s) based upon freedom of choice.

#### C. Shared Living Options

1. Shared Living Conversion Option. The shared living conversion option is only allowed for providers of homes which were previously licensed and Medicaid certified as an ICF/DD for up to a maximum of eight licensed and Medicaid-funded beds on October 1, 2009.

a. The number of participants for the shared living conversion option shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/DD on October 1, 2009, or up to six individuals, whichever is less.

b. The ICF/DD used for the shared living conversion option must meet the department's operational, programming and quality assurances of health and safety for all participants.

c. The provider of shared living services is responsible for the overall assurances of health and safety for all participants.

d. The provider of shared living conversion option may provide nursing services and professional services to participants utilizing this residential services option.

2. Shared Living Non-Conversion (New) Option. The shared living non-conversion option is allowed only for new or existing ICF/DD providers to establish a shared living waiver home for up to a maximum of three individuals.

a. The shared living waiver home must be located separate and apart from any ICF/DD.

b. The shared living waiver home must be either a home owned or leased by the waiver participants or a home owned or leased and operated by a licensed shared living provider.

c. The shared living waiver home must meet department's operational, programming and quality assurances for home and community-based services.

d. The shared living provider is responsible for the overall assurances of health and safety for all participants.

#### D. Service Exclusions

1. ...

2. Payments shall not be made for environmental accessibility adaptations when the provider owns or leases the residence.

3. Participants may receive one-time transitional services only if the participant owns or leases the home and the service provider is not the owner or landlord of the home.

a. - d. Repealed.

4. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

5. Transportation-community access services cannot be billed or provided for participants receiving shared living services, as this is a component of shared living services.

6. The following services are not available to participants receiving shared living services:

- a. community living supports;
- b. respite care services;
- c. companion care;

d. host home; or

e. personal emergency response system.

E. Provider Qualifications. Providers must be approved by the department and have a current, valid license as a Supervised Independent Living agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### §16331. Specialized Medical Equipment and Supplies

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### §16333. Support Coordination

A. Support coordination services are provided to all ROW participants to assist them in gaining access to needed waiver services, Medicaid State Plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services. Support coordinators provide information and assistance to waiver participants by directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the participant's POC.

B. Support coordinators are responsible for providing assistance to participants who choose the self-direction option with their review of the Self-Direction Employer Handbook and for being available to these participants for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements for targeted case management services as set forth in LAC 50:XV.Chapter 105 and the Medicaid Targeted Case Management Manual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### §16335. Supported Employment

A. Supported employment provides assistance in an integrated work setting to assist in the achievement and attainment of work related skills and includes on-going support to maintain employment.

1. - 3. Repealed.

B. Supported Employment services include:

1. ...
2. services that assist a participant to develop and operate a micro-enterprise;
  - a. this service consists of:
    - i. assisting the participant to identify potential business opportunities;
    - ii. ...
    - iii. identification of the supports that are necessary in order for the participant to operate the business; and
    - iv. ...
3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The workers with disabilities may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business;
4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor); and
5. all transportation from the agency to all work sites related to provision of the service. The provider is responsible for furnishing the transportation.

C. Service Limits

1. The required minimum number of service hours per day per participant is as follows for:
  - a. individual placement services, the minimum is one hour;
  - b. services that assist a participant to develop and operate a micro-enterprise, the minimum is one hour;
  - c. an enclave, the minimum is 2.5 hours; and
  - d. a mobile work crew, the minimum is 2.5 hours.
2. Two half-day units may be billed if the participant spends a minimum of five hours at the service site.
3. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.
4. Transportation to and from the service site is offered and billable as a component of the support employment service; however, transportation is payable only when a supported employment service is provided on the same day.

D. Service Exclusions

1. ...
2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.
3. - 3.c....
4. Any time less than 2.5 hours for enclaves and mobile crews is not billable or payable.
5. ...
  - a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.
6. - 6.c....
7. Services are not available to individuals who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.
8. No rounding up of hours is allowed.

E. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a Community Rehabilitation Program or a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

**§16337. Transportation-Community Access**

A. Transportation-community access services enable participants to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, community inclusion and to support self-directed employees benefits as outlined in the participant's POC. Transportation-community access services shall be offered as documented in the participant's approved POC.

1. The participant must be present to receive this service.
2. Whenever possible, the participant must utilize the following resources for transportation:

a. - b. ...

B. Service Limits

1. Community access trips are limited to three per day and must be arranged for geographic efficiency.
2. Greater than three trips per day require approval from the department or its designee.
  - a. Repealed.

C. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.
2. Separate payment will not be made for transportation-community access and the following services:
  - a. shared living services; or
  - b. community living services.
3. Transportation-community access will not be used to transport participants to day habilitation, pre-vocational, or supported employment services.

D. Provider Qualifications. Friends and family members who furnish transportation-community access services to waiver participants must be enrolled as Medicaid Friends and Family Transportation providers.

1. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain:
  - a. the state minimum automobile liability insurance coverage;
  - b. a current state inspection sticker; and
  - c. a current valid driver's license.
2. No special inspection by the Medicaid agency will be conducted.
  - a. - b. Repealed.

3. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the signed statement of

the individual enrolling for payment that all three requirements are met.

a. The statement must also have the signature of two witnesses.

4. Family and friends transportation providers are limited to transporting up to three specific waiver participants.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

E.1. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

## **Chapter 165. Self-Direction Initiative**

### **§16501. Self-Direction Service Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver participant to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver participants choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the participant or authorized representative include:

1. - 2. ...

a. Participants must adhere to the health and welfare safeguards identified by the support team, including:

i. ...

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver participants;

3. ...

a. This annual budget is determined by the recommended service hours listed in the participant's POC to meet his needs.

b. The participant's individual budget includes a potential amount of dollars within which the participant, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver participant may choose at any time to withdraw from the self-direction

service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service option;

b. the participant is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three payment cycles in the period of a year, the participant or authorized representative:

i. ...

ii. fails to follow the Personal Purchasing Plan and the POC;

C.2.d.iii. - D. ...

E. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the participant and the primary Companion Care provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

## **Chapter 167. Provider Participation**

### **§16701. General Provisions**

A. ...

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department;

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual;

3. comply with all of the state laws and regulations for conducting business in Louisiana, and when applicable, with the state requirements for designation as a non-profit organization; and

4. comply with all of the training requirements for providers of waiver services.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver participant and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the participant is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her POC.

D. If transportation is provided as part of a waiver service, the provider must comply with all of the state laws and regulations applicable to vehicles and drivers.

E. All services rendered shall be prior approved and in accordance with the POC.

F. Providers, including direct care staff, cannot live in the same residence as the participant, except host home contractors and companion care workers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### **§16703. Staffing Restrictions and Requirements**

A. Payments shall not be made to persons who are legally responsible for the care of the waiver participants which include:

1. parents of minor children;
2. spouses for each other;
3. legal guardians for adults or children with developmental disabilities; or
4. parents for their adult child with developmental disabilities, regardless of the legal status of the adult child.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the participant.

1. Relatives must also comply with the following requirements:

- a. become an employee of the participant's chosen waiver provider agency;
- b. become a Medicaid enrolled provider agency; or
- c. if the self-direction option is selected, relatives must:

- i. become an employee of the self-direction participant; and
- ii. have a Medicaid provider agreement executed by the fiscal agent as authorized by the Medicaid agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

### **Chapter 169. Reimbursement**

#### **§16901. Reimbursement Methodology**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. - 3.e....
- f. registered dietician;
4. support coordination; or
5. supported employment:
  - a. individual placement; and
  - b. micro-enterprise.
6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. environmental accessibility adaptations; and
  - a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates;

2. assistive technology/specialized medical equipment and supplies.

3. Repealed.

C. The following services are reimbursed at a per diem rate:

1. ...
2. companion cares; and
3. shared living services;

- a. per diem rates are established based on the number of individuals sharing the living service module for both shared living non-conversion and shared living conversion services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

1. day habilitation;
2. pre-vocational; and
3. supported employment:
  - a. mobile crew; and
  - b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for Residential Options Waiver services shall be reduced by two percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaption services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

#### **§16903. Direct Support Staff Wages**

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher:

1. community living supports;
2. respite services-out of home;
3. shared living;
4. day habilitation;
5. prevocational services; and
6. supported employment.
7. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

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

Anthony Keck  
Secretary

1008#107

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

#### Home and Community-Based Services Waivers Residential Options Waiver Service Budget and Reimbursement Rate Reduction (LAC 50:XXI.16103 and 16901)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.16103 and 16901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from

institutional care (*Louisiana Register*, Volume 33, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (*Louisiana Register*, Volume 36, Number 4).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget for waiver participants and to reduce the reimbursement rates for waiver services. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Residential Options Waiver by approximately \$30,918 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget and to reduce the reimbursement rates.

### Title 50

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

#### Subpart 13. Residential Options Waiver

#### Chapter 161. General Provisions

#### §16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options which best meet the individual's needs and preferences;
2. meets the highest standards of quality and national best practices in the provision of services; and
3. ensures health and safety through a comprehensive system of participant safeguards.
4. Repealed.

C. All ROW services are accessed through the support coordination agency of the participant's choice.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the participant's support coordinator.

D. All services must be prior authorized and delivered in accordance with the approved POC.

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and will not exceed the approved ICF/DD ICAP rate established for that individual.

1. When the department determines that it is necessary to adjust the ICF/DD ICAP rate, each waiver participant's annual service budget shall be adjusted to ensure that the



participant's total available expenditures do not exceed the approved ICAP rate.

F. No reimbursement for ROW services shall be made for a participant who is admitted to an inpatient setting.

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

## **Chapter 169. Reimbursement**

### **§16901. Reimbursement Methodology**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service, which covers both the service provision and administrative costs for these services:

1. - 3.e....
  - f. registered dietician;
4. Support Coordination; or
5. Supported Employment:
  - a. individual placement; and
  - b. micro-enterprise.
6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. environmental accessibility adaptations; and
  - a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates;
2. assistive technology/specialized medical equipment and supplies.
3. Repealed.

C. The following services are reimbursed at a per diem rate:

1. ...
2. companion care; and
3. shared living services;
  - a. per diem rates are established based on the number of individuals sharing the living service module for both Shared Living Non-Conversion and Shared Living Conversion Services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

1. day habilitation;
2. pre-vocational; and
3. supported employment:
  - a. mobile crew; and
  - b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the

cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for Residential Options Waiver services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaption services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#020

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing**

Home and Community-Based Services Waivers  
Supports Waiver  
Reimbursement Rate Reduction  
(LAC 50:XXI.6101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the

Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the Supports Waiver to implement a wage enhancement payment to providers for direct support professionals and amended the service provisions to include support coordination as a covered service (*Louisiana Register*, Volume 34, Number 4). As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for Supports Waiver services to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$168,788 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

## **Part XXI. Home and Community Based Services**

### **Waivers**

#### **Subpart 5. Supports Waiver**

### **Chapter 61. Reimbursement Methodology**

#### **§6101. Reimbursement Methodology**

A. - J. ...

K. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Supports Waiver services shall be reduced by 5.35 percent of the rates on file as of January 21, 2010.

1. Support coordination services and personal emergency response system (PERS) services shall be excluded from the rate reduction.

L. Effective for dates of service on or after August 1, 2010, the reimbursement rates for Supports Waiver services shall be reduced by 2 percent of the rates on file as of July 31, 2010.

1. Support coordination services and personal emergency response system services shall be excluded from the rate reduction.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#021

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Children's Specialty Hospitals  
(LAC 50:V.909 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.909 and §967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions which established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals and implemented prospective per diem rates for various hospital peer groups (*Louisiana Register*, Volume 20, Number 6). Separate peer group payment rates were established for certain specialty hospital services rendered in the general acute care setting. Children's hospitals were categorized as a specialty hospital within the acute care general hospital peer group.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the June 1994 Rule governing inpatient hospital services to revise the reimbursement methodology for children's specialty hospitals (*Louisiana Register*, Volume 35, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2009 Emergency Rule. This action is necessary to promote the health and welfare of children who are in critical need of inpatient specialty services.

Effective August 30, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospitals**

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter A. General Provisions**

**§909. Children's Specialty Hospitals**

A. In order to receive Medicaid reimbursement for inpatient services as a children's specialty hospital, the acute care hospital must meet the following criteria:

1. be recognized by Medicare as a prospective payment system (PPS) exempt children's specialty hospital;
2. does not qualify for Medicare disproportionate share hospital payments; and
3. has a Medicaid inpatient days utilization rate greater than the mean plus two standard deviations of the Medicaid utilization rates for all hospitals in the state receiving Medicaid payments.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Subchapter B. Reimbursement Methodology**

**§967. Children's Specialty Hospitals**

A. Routine Pediatric Inpatient Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

B. Inpatient Psychiatric Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by CMS beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants. Payment shall be the lesser of costs or the per diem limitation for each specialty service or type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each specialty or type of transplant per the cost reporting period ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each specialty or type of transplant multiplied times the per diem limitation for the period.

D. Children's specialty hospitals shall not be eligible for outlier payments after September 1, 2009.

1. Outlier payments made in SFY 2010 in excess of \$12,798,000 shall be considered as an interim payment in the determination of the cost settlement.

E. These provisions shall not preclude children's specialty hospitals from participation in the Medicaid Program under the high Medicaid or graduate medical education supplemental payment provisions.

1. All Medicaid supplemental payments shall be included as an interim Medicaid inpatient payment in the determination of cost settlement amounts on the filed cost report.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

Anthony Keck  
Secretary

1008#097

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Major Teaching Hospitals  
(LAC 50:V.1333)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.1333 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than 30 percent and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana at New Orleans due to the impact of Hurricane Katrina (*Louisiana Register*, Volume 34, Number 5). The

Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental Medicaid payment to acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients (*Louisiana Register*, Volume 35, Number 10). The department amended the provisions of the October 1, 2009 Emergency Rule in order to revise which fiscal year's claims data the quarterly payments will be based on. (*Louisiana Register*, Volume 36, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2010 Emergency Rule.

This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services.

Effective September 18, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the October 1, 2009 Emergency Rule governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state hospitals designated as major teaching hospitals.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 1. Inpatient Hospitals**

#### **Chapter 13. Teaching Hospitals**

#### **Subchapter B. Reimbursement Methodology**

#### **§1333. Major Teaching Hospitals**

A. Effective for dates of service on or after October 1, 2009, a quarterly supplemental payment shall be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. These payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must:

- a. be designated as a major teaching hospital by the department in state fiscal year 2009;
- b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2008 dates of service; and
- c. have provided at least 4,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2008 dates of service.

2. Payments shall be distributed quarterly and shall be calculated using the Medicaid paid days for service dates in state fiscal year 2009 serving as a proxy for SFYs 2010 and 2011 service dates.

3. Payments are applicable to Medicaid service dates provided during each quarter and shall be discontinued for the remainder of the state fiscal year in the event that the maximum payment cap is reached or by June 30, 2011, whichever occurs first.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

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

Anthony Keck  
Secretary

1008#098

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Inpatient Hospital Services  
Reimbursement Methodology  
(LAC 50:V.Chapters 7 and 9)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 7 and amends §§953, 955, 959 and 967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In anticipation of a budgetary shortfall in state fiscal year (SFY) 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing inpatient hospital services to reduce the reimbursement rates paid to non-rural non-state hospitals (*Louisiana Register*, Volume 35, Number 5). As a result of the legislature allocating additional funds to lessen the impact of SFY 2010 budget reductions, the department repealed the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and amended the provisions governing inpatient hospital services to adjust the rate reductions (*Louisiana Register*, Volume 35, Number 8). The final Rule was published July 20, 2010 (*Louisiana Register*, Volume 36, Number 7). In January 2010, the department established a Medicaid upper payment limit financing mechanism to provide supplemental

payments to hospitals for providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). As a result of a continuing budgetary shortfall in SFY 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 1). The department subsequently promulgated an Emergency Rule which repealed the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for inpatient hospital services to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in SFY 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals. This action is being taken to avoid a budget deficit in the medical assistance programs.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services and children's specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule which established the provisions governing a prospective reimbursement methodology for inpatient hospital services (*Louisiana Register*, Volume 20, Number 6). These provisions included the establishment of general and specialized peer group per diem rates, level of care criteria and staffing requirements for certain resource intensive inpatient services and an appeals procedure for adjustment of rate components. The department has now determined that it is necessary to amend the provisions governing the appeals procedure that address the criteria for qualifying loss. This action is being taken to encourage the on-going participation of hospitals in the Medicaid Program and to assure continued access to inpatient care.

It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$21,093,620 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals and to amend the provisions governing the criteria for qualifying loss.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 7. Prospective Reimbursement**

##### **Subchapter A. Appeals Procedure**

#### **§701. Request for Administrative Review**

A. Any hospital seeking an adjustment to its rate, shall submit a written request for administrative review to the Medicaid director (hereafter referred to as "director") within

30 days after receipt of the letter notifying the hospital of its rates.

1. The receipt of the letter notifying the hospital of its rates shall be deemed to be 5 days from the date of the letter.

2. The time period for requesting an administrative review may be extended upon written agreement between the department and the hospital.

B. The department will acknowledge receipt of the written request within 30 days after actual receipt. Additional documentation may be requested from the hospital as may be necessary for the director to render a decision. The director shall issue a written decision upon the hospital's request for a rate adjustment within 90 days after receipt of all additional documentation or information requested.

C. Any hospital seeking an adjustment to its rate, must specify all of the following:

1. the nature of the adjustment sought;

2. the amount of the adjustment sought; and

3. the reasons or factors that the hospital believes justify an adjustment.

D. Any request for an adjustment must include an analysis demonstrating the extent to which the hospital is incurring or expects to incur a qualifying loss in providing covered services to Medicaid and indigent patients.

1. For purposes of these provisions, qualifying loss shall mean that amount by which the hospital's allowable costs (excluding disproportionate share payment adjustments) exceed the Medicaid reimbursement implemented pursuant to these provisions.

2. "Cost" when used in the context of allowable shall mean a hospital's costs incurred in providing covered inpatient services to Medicaid and indigent patients, as calculated in the relevant definitions governing cost reporting.

E. The hospital will not be required to present an analysis of its qualifying loss where the basis for its appeal is limited to a claim that:

1. the rate-setting methodology or criteria for classifying hospitals or hospital claims under the State Plan were incorrectly applied;

2. that incorrect or incomplete data or erroneous calculations were used in establishment of the hospital rates; or

3. the hospital had incurred additional costs because of a catastrophe that meets certain conditions.

F. Except in cases where the basis for the hospital's appeal is limited to a claim that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied, or that the incorrect or incomplete data or erroneous calculations were in the establishment of the hospital's rate, the department will not award additional reimbursement to a hospital, unless the hospital demonstrates that the reimbursement it receives based on its prospective rate is 70 percent or less of the allowable costs it incurs in providing Medicaid patients care and services that conform to the applicable state and federal laws of quality and safety standards.

1. The department will not increase a provider's rate to more than 105 percent of the peer group rate.

G. In cases where the rate appeal relates to an unresolved dispute between the hospital and its Medicare fiscal

intermediary as to any cost reported in the hospital's base year cost report, the director will resolve such disputes for purposes of deciding the request for administrative review.

H. The following matters will not be subject to appeal:

1. the use of peer grouped rates;
2. the use of teaching, non-teaching and bed-size as criteria for hospital peer groups;
3. the use of approved graduate medical education and intern and resident full time equivalents as criteria for major teaching status;
4. the use of fiscal year 1991 medical education costs to establish a hospital-specific medical education component of each teaching hospital's prospective rate;
5. the application of inflationary adjustments contingent on funding appropriated by the legislature;
6. the criteria used to establish the levels of neonatal intensive care;
7. the criteria used to establish the levels of pediatric intensive care;
8. the methodology used to calculate the boarder baby rates for nursery;
9. the use of hospital specific costs for transplant per diem limits;
10. the criteria used to identify specialty hospital peer groups; and
11. the criteria used to establish the level of burn care.

I. The hospital shall bear the burden of proof in establishing facts and circumstances necessary to support a rate adjustment. Any costs that the provider cites as a basis for relief under this provision must be calculable and auditable.

J. The department may award additional reimbursement to a hospital that demonstrates by clear and convincing evidence that:

1. a qualifying loss has occurred and the hospitals current prospective rate jeopardized the hospital's long-term financial viability; and
2. the Medicaid population served by the hospital has no reasonable access to other inpatient hospitals for the services that the hospital provides and that the hospital contends are under reimbursed; or
3. alternatively, demonstrates that its uninsured care hospital costs exceeds 5 percent of its total hospital costs, and a minimum of \$9,000,000 in uninsured care hospital cost in the preceding 12 month time period and the hospital's uninsured care costs has increased at least 35 percent during a consecutive six month time period during the hospital's latest cost reporting period.

a. For purposes of these provisions, an uninsured patient is defined as a patient that is not eligible for Medicare or Medicaid and does not have insurance.

b. For purposes of these provisions, uninsured care costs are defined as uninsured care charges multiplied by the cost to charge ratios by revenue code per the last filed cost report, net of payments received from uninsured patients.

i. The increase in uninsured care costs must be a direct result of a permanent or long term (no less than six months) documented change in services that occurred at a state owned and operated hospital located less than eight miles from the impacted hospital.

ii. For the purpose of this Rule, if a hospital has multiple locations of service, each location shall measure

uninsured care costs separately and qualify each location as an individual hospital. Rate adjustments awarded under this provision will be determined by the secretary of the department and shall not exceed five percent of the applicable per diem rate.

K. In determining whether to award additional reimbursement to a hospital that has made the showing required, the director shall consider one or more of the following factors and may take any of these actions.

1. The director shall consider whether the hospital has demonstrated that its unreimbursed costs are generated by factors generally not shared by other hospitals in the hospital's peer group. Such factors may include, but are not limited to extraordinary circumstances beyond the control of the hospital and improvements required to comply with licensing or accrediting standards. Where it appears from the evidence presented that the hospital's costs are controllable through good management practices or cost containment measures or that the hospital has through advertisement to the general public promoted the use of high costs services that could be provided in a more cost effective manner, the director may deny the request for rate adjustment.

2. The director may consider, and may require the hospital to provide financial data, including but not limited to financial ratio data indicative of the hospital's performance quality in particular areas of hospital operation.

3. The director shall consider whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis. In making such a determination, the director may require the hospital to provide audited cost data or other quantitative data including, but not limited to:

- a. occupancy statistics;
- b. average hourly wages paid;
- c. nursing salaries per adjusted patient day;
- d. average length of stay;
- e. cost per ancillary procedure;
- f. average cost per meal served;
- g. average cost per pound of laundry;
- h. average cost per pharmacy prescription;
- i. housekeeping costs per square foot;
- j. medical records costs per admission;
- k. full-time equivalent employees per occupied bed;
- l. age of receivables;
- m. bad debt percentage;
- n. inventory turnover rate; and
- o. information about actions that the hospital has taken to contain costs.

4. The director may also require that an onsite operational review/audit of the hospital be conducted by the department of its designee.

L. In awarding relief under this provision, the director shall:

1. make any necessary adjustments so as to correctly apply the rate-setting methodology, to the hospital submitting the appeal, or to correct calculations, data errors or omissions; or

2. increase one or more of the hospital's rates by an amount that can reasonably be expected to ensure continuing access to sufficient inpatient hospital services of adequate quality for Medicaid patients served by the hospital.

M. The following decisions by the director shall not result in any change in the peer group rates:

1. the decision to:
  - a. recognize omitted, additional or increased costs incurred by any hospital;
  - b. adjust the hospital rates; or
  - c. otherwise award additional reimbursement to any hospital.

N. Hospitals that qualify under this provision must document their continuing eligibility at the beginning of each subsequent state fiscal year. Rate adjustments granted under this provision shall be effective from the first day of the rate period to which the hospital's appeal relates. However, no retroactive adjustments will be made to the rate or rates that were paid during any prior rate period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**§703. Administrative Appeal and Judicial Review**

A. If the director's decision is adverse to the hospital, the hospital may appeal the director's decision to the Bureau of Appeals or its successor. The appeal must be lodged within 30 days of receipt of the written decision of the director. The receipt of the decision of the director shall be deemed to be five days from the date of the decision. The administrative appeal shall be conducted in accordance with the Louisiana Administrative Procedure Act (APA). The Bureau of Appeals shall submit a recommended decision to the secretary of the department. The secretary will issue the final decision of the department.

B. Judicial review of the secretary's decision shall be in accordance with the APA and shall be filed in the nineteenth Judicial District Court.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§953. Acute Care Hospitals**

A. - M. ...

N. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

O. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by five percent of the per diem rate on file as of February 2, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1300 shall be exempt from this reduction.

P. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1300 shall be exempt from this reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:

**§955. Long Term Hospitals**

A. - E. ...

F. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by five percent of the per diem rate on file as of February 2, 2010.

G. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:

**§959. Inpatient Psychiatric Hospital Services**

A. - G. ...

H. Effective for dates of service on or after February 3, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

I. Effective for dates of service on or after August 1, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:

**§967. Children's Specialty Hospitals**

A. Routine Pediatric Inpatient Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

B. Inpatient Psychiatric Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by CMS beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants. Payment shall be the lesser of costs or the per diem limitation for each specialty service or type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each specialty or type of transplant per the cost reporting period ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each specialty or type of transplant multiplied times the per diem limitation for the period.

D. Children's specialty hospitals shall not be eligible for outlier payments after September 1, 2009.

1. Outlier payments made in SFY 2010 in excess of \$12,798,000 shall be considered as an interim payment in the determination of the cost settlement.

E. These provisions shall not preclude children's specialty hospitals from participation in the Medicaid Program under the high Medicaid or graduate medical education supplemental payment provisions.

1. All Medicaid supplemental payments shall be included as an interim Medicaid inpatient payment in the

determination of cost settlement amounts on the filed cost report.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.A-C above shall be reduced by 5 percent. Final payment shall be the lesser of 95 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A-C for the period, multiplied by 95 percent of the target rate per discharge or per diem limitation as specified per §967.A-C for the period.

G. Effective for dates of service on or after August 1, 2010, the per diem rates as calculated per §967.A-C above shall be reduced by 4.6 percent. Final payment shall be the lesser of 90.63 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A-C for the period, multiplied by 90.63 percent of the target rate per discharge or per diem limitation as specified per §967.A-C for the period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#032

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Inpatient Hospital Services—Small Rural Hospitals  
Upper Payment Limit (LAC 50:V.1125 and 1127)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 and 1127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for



inpatient acute care services and psychiatric services (*Louisiana Register*, Volume 35, Number 5). Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department proposes to amend the provisions governing the reimbursement methodology for small rural hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services. It is estimated that the implementation of this proposed Rule will increase expenditures for inpatient hospital services by approximately \$18,759,924 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by small rural hospitals.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 11. Rural, Non-State Hospitals**

#### **Subchapter B. Reimbursement Methodology**

#### **§1125. Small Rural Hospitals**

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement for inpatient acute care services rendered by small rural hospitals shall be up to the Medicare upper payment limits for inpatient hospital services.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **§1127. Inpatient Psychiatric Hospital Services**

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement paid for psychiatric services rendered by distinct part psychiatric units in small rural hospitals shall be up to the Medicare inpatient upper payment limits.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#033

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Intermediate Care Facilities for Persons with  
Developmental Disabilities—Non-State Facilities  
Reimbursement Methodology (Restorations)  
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*, Volume 36, Number 7). As a result of a budgetary shortfall in state fiscal year 2011, the department determined that it was necessary to amend the provisions governing the reimbursement methodology for non-state ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8).

The department has now determined that it is necessary to amend the provisions governing the reimbursement methodology for non-state ICFs/DD to restore the per diem rates paid to private providers who have downsized large facilities to less than 35 beds and incurred unusually high capital costs as a result of the downsizing. This action is being taken to protect the health and welfare of Medicaid recipients and to insure continued provider participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$523,218 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part VII. Long Term Care**  
**Subpart 3. Intermediate Care Facilities for Persons with**  
**Developmental Disabilities**  
**Chapter 329. Reimbursement Methodology**  
**Subchapter A. Non-State Facilities**  
**§32903. Rate Determination**

A. - J. ...

K. Effective for dates of service on or after August 1, 2010, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

L. Effective for dates of service on or after August 1, 2010, the per diem rates for ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be restored to the rates in effect on January 1, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#030

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Intermediate Care Facilities for Persons with  
Developmental Disabilities—Public Facilities  
Reimbursement Methodology  
(LAC 50:VII.32965-32969)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32965-32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the

provisions governing the reimbursement methodology for state-operated intermediate care facilities for persons with developmental disabilities (ICFs/DD) and established payments using a formula that established per diem rates at the Medicare upper payment limit for these services (*Louisiana Register*, Volume 29, Number 11). Upon submission of the corresponding State Plan amendment to the Centers for Medicare and Medicaid Services for review and approval, the department determined that it was also necessary to establish provisions in the Medicaid State Plan governing the reimbursement methodology for quasi-public ICFs/DD. The department now proposes to amend the provisions governing the reimbursement methodology for public ICFs/DD to establish a transitional Medicaid reimbursement rate for community homes that are being privatized. This Emergency Rule will also adopt all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$853,660 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part VII. Long Term Care**  
**Subpart 3. Intermediate Care Facilities for Persons with**  
**Developmental Disabilities**  
**Chapter 329. Reimbursement Methodology**  
**Subchapter C. Public Facilities**  
**§32965. State-Owned and Operated Facilities**

A. Medicaid payments to state-owned and operated intermediate care facilities for persons with developmental disabilities are based on the Medicare formula for determining the routine service cost limits as follows:

1. calculate each state-owned and operated ICF/DD's per diem routine costs in a base year;
2. calculate 112 percent of the average per diem routine costs; and
3. inflate 112 percent of the per diem routine costs using the skilled nursing facility (SNF) market basket index of inflation.

B. Each state-owned and operated facility's capital and ancillary costs will be paid by Medicaid on a "pass-through" basis.

C. The sum of the calculations for routine service costs and the capital and ancillary costs "pass-through" shall be the per diem rate for each state-owned and operated ICF/DD. The base year cost reports to be used for the initial calculations shall be the cost reports for the fiscal year ended June 30, 2002.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

### §32967. Quasi-Public Facilities

A. Medicaid payment to quasi-public facilities is a facility-specific prospective rate based on budgeted costs. Providers shall be required to submit a projected budget for the state fiscal year beginning July 1.

B. The payment rates for quasi-public facilities shall be determined as follows:

1. determine each ICF/DD's per diem for the base year beginning July 1;
2. calculate the inflation factor using an average CPI index applied to each facility's per diem for the base year to determine the inflated per diem;
3. calculate the median per diem for the facilities' base year;
4. calculate the facility's routine cost per diem for the SFY beginning July 1 by using the lowest of the budgeted, inflated or median per diem rates plus any additional allowances; and
5. calculate the final approved per diem rate for each facility by adding routine costs plus any "pass through" amounts for ancillary services, provider fees, and grant expenses.

C. Providers may request a final rate adjustment subject to submission of supportive documentation and approval by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

### §32969. Transitional Rates for Public Facilities

A. Effective August 1, 2010, the department shall establish a transitional Medicaid reimbursement rate of \$302.08 per day per individual for a public ICF/DD community home that is transitioning to a private facility, provided that the community home meets the following criteria. The community home:

1. shall have a fully executed Cooperative Endeavor Agreement (CEA) with the Office for Citizens with Developmental Disabilities for the private operation of the facility;
2. shall have a high concentration of medically fragile individuals being served, as determined by the department; and
  - a. for purposes of these provisions, a medically fragile individual shall refer to an individual who has a medically complex condition characterized by multiple, significant medical problems that require extended care;
3. incurs or will incur higher existing costs not currently captured in the private ICF/DD rate methodology.

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of three years, whichever is shorter.

C. The transitional Medicaid reimbursement rate is all-inclusive and incorporates the following cost components:

1. direct care staffing;
2. medical/nursing staff, up to 23 hours per day;
3. medical supplies;
4. transportation;
5. administrative; and
6. the provider fee.

D. If the community home meets the criteria in §32969.C and the individuals served require that the community home

has a licensed nurse at the facility 24 hours per day, seven days per week, the community home may apply for a supplement to the transitional rate. The supplement to the rate shall not exceed \$25.33 per day per individual.

E. The total transitional Medicaid reimbursement rate, including the supplement, shall not exceed \$327.41 per day per individual.

F. The transitional rate and supplement shall not be subject to the following:

1. inflationary factors or adjustments;
2. rebasing;
3. budgetary reductions; or
4. other rate adjustments.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#031

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Developmental Disabilities—Reimbursement Rate Reduction  
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana

Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*, Volume 36, Number 7).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for ICFs/DD to reduce the per diem rates. This action is being taken to avoid a budget deficit in the medical assistance programs.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) intermediate care facility services for persons with developmental disabilities under the state plan are available at least to the extent that they are available to the general population in the state. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$4,004,832 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for intermediate care facilities for persons with developmental disabilities to reduce the per diem rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part VII. Long Term Care**

#### **Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities**

#### **Chapter 329. Reimbursement Methodology**

#### **Subchapter A. Non-State Facilities**

#### **§32903. Rate Determination**

A. - J. ...

K. Effective for dates of service on or after August 1, 2010, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine  
Secretary

1008#022

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Laboratory and Radiology Services  
Reimbursement Rate Reduction  
(LAC 50:XIX.4329 and 4333-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 and repeals LAC 50:XIX.4333 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates. In addition, the provisions contained in this Chapter governing the reimbursement for outpatient hospital laboratory services are being repealed as these provisions have been amended and repromulgated in LAC 50:V.Chapter 57. This action is being taken to avoid a budget deficit in the medical assistance programs. It is

estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$3,850,347 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XIX. Other Services**

#### **Subpart 3. Laboratory and Radiology**

#### **Chapter 43. Billing and Reimbursement**

#### **Subchapter B. Reimbursement**

#### **§4329. Laboratory Services (Physicians and Independent Laboratories)**

A. - G. ...

H. Effective for dates of service on or after January 22, 2010, the reimbursement rates for laboratory services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

I. Effective for dates of service on or after August 1, 2010, the reimbursement rates for laboratory services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:

#### **§4333. Outpatient Hospital Laboratory Services Reimbursement**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Service Financing (for inclusion in the LAC) LR 28:1026 (May 2002), amended LR 29:1096 (July 2003), repealed LR 36:

#### **§4334. Radiology Services**

A. - F. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

H. Effective for dates of service on or after August 1, 2010, the reimbursement rates for radiology services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:

#### **§4335. Portable Radiology Services**

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for portable radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

F. Effective for dates of service on or after August 1, 2010, the reimbursement rates for portable radiology services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:

#### **§4337. Radiation Therapy Centers**

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

F. Effective for dates of service on or after August 1, 2010, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#023

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Medicaid Eligibility  
Medicare Savings Programs  
(LAC 50:III.2325, 10703 and 10705)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:III.2325 and §10703 and amends §10705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted the state and federal requirements governing the determination

of eligibility of persons applying for coverage under the Qualified Medicare Beneficiary, Qualified Disabled and Working Individuals, Specified Low Income Medicare Beneficiary and the Qualified Individual-1 Programs as identified under Title XIX of the Social Security Act. These are commonly referred to as the Medicare Savings Programs (MSP). Medicaid coverage under these programs is limited to payment of Medicare premiums, and may pay deductibles and co-insurance. Under Section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive resource methodologies in determining eligibility for most Medicaid eligibility groups than are used by the related cash assistance programs. The applicant's resources are currently considered in the determination of Medicaid eligibility. Resources are defined as cash assets or assets that can be converted to cash, such as bank accounts, stocks, bonds, automobiles and property.

The Medicare Improvement for Patients and Providers Act (MIPPA) of 2008 modified the provisions of the Medicare Savings Programs in order to increase enrollment and reduce barriers to enrollment. In order to reduce the administrative burden for the Medicaid Program, to align MSP eligibility more closely with the Medicare Part D Low Income Subsidy eligibility and to eliminate financial hardship for individuals, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Medicare Savings Programs to incorporate provisions regarding the submittal of low income subsidy data and to disregard certain assets in the eligibility determination process (*Louisiana Register*, Volume 36, Number 1). The department amended the provisions of the January 1, 2010 Emergency Rule to clarify the provisions governing MSP resource disregards. (*Louisiana Register*, Volume 36, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 6, 2010 Emergency Rule.

This action is being taken to promote the health and welfare of the elderly and individuals with disabilities who could derive benefits through the Medicare Savings Programs and to avoid federal sanctions.

Effective September 4, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Medicare Savings Programs.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part III. Eligibility**

#### **Subpart 3. Eligibility Groups and Factors**

#### **Chapter 23. Eligibility Groups and Medicaid Programs**

#### **§2325. Medicare Savings Programs**

A. Medical assistance furnished to Qualified Medicare Beneficiaries (QMB), Specified Low Income Beneficiaries (SLMB) and Qualified Individuals (QI) is commonly referred to as the Medicare Savings Programs (MSP). Medicaid coverage under these programs is limited to payment of Medicare premiums, and may pay deductibles and co-insurance.

1. Effective January 1, 2010, with the consent of an individual completing an application for Low Income Subsidy (LIS) benefits, the Social Security Administration will transmit LIS data to Medicaid.

2. Medicaid shall use the data to initiate an application for the individual for benefits under the Medicare Savings Program.

3. The date that the LIS application is filed with the Social Security Administration will be used as the date of application for MSP and for determining the effective date of MSP eligibility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Subpart 5. Financial Eligibility**

#### **Chapter 107. Resources**

#### **§10703. General Provisions**

A. Medicaid utilizes the income and asset methodologies of the Supplemental Security Income (SSI) Program to determine Medicaid eligibility for aged, blind and disabled individuals.

B. Under Section 1902(r)(2) of the Social Security Act, states are allowed to use less restrictive income and asset methodologies in determining eligibility for most Medicaid eligibility groups than are used by the cash assistance program.

#### **C. Medicare Savings Programs**

1. The following individual's resources shall be considered in determining eligibility for the Medicare Savings Programs:

a. the applicant/recipient; and

b. the spouse living in the home with the applicant/recipient.

2. Resource Assessment. The assets test for full Low Income Subsidy (LIS) eligibility is set at three times the SSI asset standard, indexed annually by the increase in the consumer price index.

a. Effective January 1, 2010, the asset limit for all Medicare Savings Programs will be the same as the asset limit for Medicare's Part D full benefit LIS.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **§10705. Resource Disregards**

A. - B.1. ...

C. Effective January 1, 2010, the following assets shall be disregarded in eligibility determinations for all Medicare Savings Programs:

1. all insurance, regardless of cash surrender value, and

2. all vehicles, regardless of value.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 36:

Interested persons may submit written comments to Don Gregory, Department of Health and Hospitals, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this

Emergency Rule is available for review by interested parties at parish Medicaid offices.

Anthony Keck  
Secretary

1008#099

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program  
Non-Emergency Medical Transportation  
Reimbursement Rate Reduction  
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing non-emergency medical transportation to increase the reimbursement rates (*Louisiana Register*, Volume 34, Number 5). As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for non-emergency medical transportation services to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medical Transportation Program by approximately \$369,690 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXVII. Medical Transportation Program

#### Chapter 5. Non-Emergency Medical Transportation

#### Subchapter D. Reimbursement

#### §573. Non-Emergency, Non-Ambulance Transportation

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 5 percent of the rates in effect on January 21, 2010.

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 4.5 percent of the rates in effect on July 31, 2010.

1. Friends and family providers are excluded from the rate reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#024

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program  
Termination of Parent/Family Intervention (Intensive)  
Services and Continued Treatment Clarifications  
(LAC 50:XV.335, 501-505 and 901)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals LAC 50:XV.335 and amends LAC 50:XV.501-505 and 901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management,

prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Mental Health Rehabilitation (MHR) Program to: 1) clarify staffing requirements, medical necessity criteria, provider participation requirements and provider responsibilities; and 2) remove the application fee requirement for prospective MHR providers (*Louisiana Register*, Volume 34, Number 9). The department amended the provisions governing the optional services covered under the MHR Program to revise the staffing requirements for Parent/Family Intervention (Intensive) services (*Louisiana Register*, Volume 35, Number 12).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to terminate the coverage of Parent/Family Intervention (Intensive) (PFII) services in the MHR Program and to amend the provisions governing medical necessity for MHR services in order to establish continued treatment criteria. Recipients who currently receive PFII services shall be transitioned to comparable services available in the MHR Program. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$515,704 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Mental Health Rehabilitation Program.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 1. Mental Health Rehabilitation**

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

##### **Subchapter C. Optional Services**

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

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:2067 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2758 (December 2009), repealed LR 36:

##### **Chapter 5. Medical Necessity Criteria**

##### **§501. General Provisions**

A. - C. ....

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care. MHR providers shall rate recipients on the CALOCUS/LOCUS at 90 day intervals, or at an interval

otherwise specified by the bureau, and these scores and supporting documentation must be submitted to the bureau or its designee upon request. Ongoing services require authorization which may occur every 90 days or at any interval requested by the bureau or its designee, based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005) amended LR 32:2067 (November 2006), LR 34:1914 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

##### **§503. Adult Criteria for Services**

A. - A.3.d.Note. ...

B. Criteria for Continued Treatment. Continuation of MHR treatment is medically necessary for individuals who meet all of the following criteria:

1. clinical evidence indicates a persistence of the problems that necessitated the provision of MHR services;

2. clinical evidence indicates that a less intensive level of care would result in exacerbation of the symptoms of the individual’s mental disorder and clinical deterioration;

3. the ISRP has been developed, implemented and updated based on the individual recipient’s clinical condition and response to treatment, as well as the strengths and availability of natural supports, with realistic goals and objectives clearly stated;

4. the recipient is actively engaged in treatment as evidenced by regular participation in services as scheduled;

5. progress is evident that the individual’s disorder can be expected to improve significantly through medically necessary, appropriate therapy and that the individual is able to benefit from the therapy provided; and

6. there is clinical evidence of symptom improvement. If there has been no improvement, the ISRP may be reviewed and the frequency, amount or duration of services may be adjusted to a clinically appropriate level as determined by the bureau.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amended LR 32:2068 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

A. - A.3.d....

B. Criteria for Continued Treatment. Continuation of MHR treatment is medically necessary for children/youth who meet all of the following criteria:

1. clinical evidence indicates a persistence of the problems that necessitated the provision of MHR services;

2. clinical evidence indicates that a less intensive level of care would result in exacerbation of the symptoms of the child’s mental or behavioral disorder and clinical deterioration;



3. the ISRP has been developed, implemented and updated based on the individual child's clinical condition and response to treatment, as well as the strengths and availability of natural supports, with realistic goals and objectives clearly stated;

4. the recipient and family are actively engaged in treatment as evidenced by regular participation in services as scheduled;

5. progress is evident that the child's mental or behavioral disorder can be expected to improve significantly through medically necessary, appropriate therapy and that the child is able to benefit from the therapy provided; and

6. there is clinical evidence of symptom improvement. If there has been no improvement, the ISRP may be reviewed and the frequency, amount or duration of services may be adjusted to a clinically appropriate level as determined by the bureau.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2068 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

## **Chapter 9. Reimbursement**

### **§901. Reimbursement Methodology**

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement rates for mental health rehabilitation services shall be reduced by 1.62 percent of the rates on file as of January 21, 2010.

G. Effective for dates of service on or after August 1, 2010, Medicaid reimbursement shall be terminated for parent/family intervention (intensive) services.

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

HISTORICAL NOTE: Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#025

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing**

Multi-Systemic Therapy  
Reimbursement Rate Reduction  
(LAC 50:XV.25701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for multi-systemic therapy (MST) to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6). As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing MST to further reduce the reimbursement rates and to establish prior authorization requirements (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for multi-systemic therapy services to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$330,284 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for multi-systemic therapy services to reduce the reimbursement rates.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XV. Services for Special Populations**  
**Subpart 17. Multi-Systemic Therapy**

**Chapter 257. Reimbursement**

**§25701. Reimbursement Methodology**

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 5 percent of the rates on file as of January 21, 2010.

D. Effective for dates of service on or after August 1, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 2.63 percent of the rates on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 35:247 (February 2009), amended LR 36:1250 (June 2010), LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#026

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals and Children's  
Specialty Hospitals—Reimbursement Rate Reduction  
(LAC:V.5313, 5317, 5513, 5517,  
5713, 5719, 6115, and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5313, §5317, §5513, §5517, §5713, §5719, §6115, and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other

measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In anticipation of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing outpatient hospital services to reduce the reimbursement rates paid to non-rural non-state hospitals (*Louisiana Register*, Volume 35, Number 5). As a result of the legislature allocating additional funds to lessen the impact of SFY 2010 budget reductions, the department repealed the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and amended the provisions governing outpatient hospital services to adjust the rate reductions (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6). In January 2010, the department established a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 36, Number 2). The department subsequently promulgated an Emergency Rule which repealed the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for outpatient hospital services to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals. This action is being taken to avoid a budget deficit in the medical assistance programs.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) outpatient hospital services and children's specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state. It is estimated that implementation of this Emergency Rule will reduce expenditures for outpatient hospital services by approximately \$6,576,728 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services to reduce the reimbursement rates.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5313. Non-Rural, Non-State Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 5 percent of the fee schedule on file as of February 2, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:

**§5317. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty

hospitals for outpatient hospital surgery services shall be as follows.

1. Qualifying hospitals shall receive an interim payment equal to the Medicaid fee schedule amount on file for each service.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 5 percent of the fee schedule on file as of February 2, 2010.

1. Final reimbursement shall be 92.15 percent of allowable cost as calculated through the cost report settlement process.

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Chapter 55. Clinic Services**

**Subchapter B. Reimbursement Methodology**

**§5513. Non-Rural, Non-State Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state

hospitals for outpatient clinic services shall be reduced by 5 percent of the fee schedule on file as of February 2, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:

#### **§5517. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital clinic services shall be the Medicaid fee schedule amount on file for each service.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 5 percent of the fee schedule on file as of February 2, 2010.

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§5713. Non-Rural, Non-State Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 5 percent of the fee schedule on file as of February 2, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), LR 36:

#### **§5719. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 5 percent of the fee schedule on file as of February 2, 2010.

C. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 4.6 percent of the fee schedule on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

##### **§6115. Non-Rural, Non-State Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries and rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

D. Effective for dates of service on or after February 3, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 5 percent of the rates effective as of February 2, 2010. Final reimbursement shall be at 74.56 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

E. Effective for dates of service on or after August 1, 2010, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010. Final reimbursement shall be at 71.13 percent of allowable cost through the cost settlement process.

1. Small rural hospitals as defined in R.S. 40:1300.143 shall be exempted from this rate reduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), amended LR 36:1250 (June 2010), amended LR 36:

#### **§6119. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be as follows.

1. Qualifying hospitals shall receive an interim payment that is equal to 97 percent of the hospital's cost to charge ratio as calculated from the latest filed cost report.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be reduced by 5 percent of the rates effective as of February 2, 2010.

1. Final reimbursement shall be 92.15 percent of allowable cost as calculated through the cost report settlement process.

C. Effective for dates of service on or after August 1, 2010, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services other than rehabilitation services and outpatient hospital facility fees shall be reduced by 4.6 percent of the rates effective as of July 31, 2010.

1. Final reimbursement shall be 90.63 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#008

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Children's Specialty Hospitals  
(LAC 50:V.Chapter 51, 5317, 5517, 5719, 5917 and 6119)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 51 and §5317, §5517, §5719, §5917 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This

Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing outpatient hospital services to revise the reimbursement methodology for services rendered by small rural hospitals and state-owned hospitals (*Louisiana Register*, Volume 35, Number 5).

The Department promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to revise the reimbursement methodology for services rendered by children's specialty hospitals (*Louisiana Register*, Volume 35, Number 9). As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the reimbursement methodology for outpatient hospital services to further reduce the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals (*Louisiana Register*, Volume 36, Number 2). The department subsequently promulgated an Emergency Rule which repealed the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for outpatient hospital services to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2).

The Bureau now proposes to amend the September 1, 2009 Emergency Rule to incorporate the provisions of the February 3, 2010 Emergency Rule. This action is necessary to promote the health and welfare of children who are in critical need of outpatient hospital specialty services. This action is being taken to ensure that these provisions are appropriately adopted into the *Louisiana Administrative Code*.

Effective August 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the September 1, 2009 Emergency Rule governing the reimbursement methodology for outpatient hospital services rendered by children's specialty hospitals.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

#### **Subpart 5. Outpatient Hospitals**

#### **Chapter 51. General Provisions**

#### **§5109. Children's Specialty Hospitals**

A. In order to receive Medicaid reimbursement for outpatient services as a children's specialty hospital, the acute care hospital must meet the following criteria:

1. be recognized by Medicare as a prospective payment system (PPS) exempt children's specialty hospital;
2. does not qualify for Medicare disproportionate share hospital payments; and
3. has a Medicaid inpatient days utilization rate greater than the mean plus two standard deviations of the Medicaid utilization rates for all hospitals in the state receiving Medicaid payments.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 53. Outpatient Surgery**

#### **Subchapter B. Reimbursement Methodology**

#### **§5317. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital surgery services shall be as follows.

1. Qualifying hospitals shall receive an interim payment equal to the Medicaid fee schedule amount on file for each service.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

1. Final reimbursement shall be 92.15 percent of allowable cost as calculated through the cost report settlement process.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 55. Clinic Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5517. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital clinic services shall be the Medicaid fee schedule amount on file for each service.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5719. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Chapter 59. Rehabilitation Services**  
**Subchapter B. Reimbursement Methodology**

**§5917. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for rehabilitation services shall be as follows.

1. Qualifying hospitals shall receive an interim payment equal to the Medicaid fee schedule amount on file for each service.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by five percent of the fee schedule on file as of February 2, 2010.

1. Final reimbursement shall be 92.15 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Chapter 61. Other Outpatient Hospital Services**

**Subchapter B. Reimbursement Methodology**

**§6119. Children's Specialty Hospitals**

A. Effective for dates of service on or after September 1, 2009, the reimbursement amount paid to children's specialty hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be as follows.

1. Qualifying hospitals shall receive an interim payment that is equal to 97 percent of the hospital's cost to charge ratio as calculated from the latest filed cost report.

2. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

B. Effective for dates of service on or after February 3, 2010, the reimbursement paid to children's specialty hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be reduced by five percent of the rates effective as of February 2, 2010.

1. Final reimbursement shall be 92.15 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Emergency Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Anthony Keck  
Secretary

1008#106

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Low Income and Needy Care Collaboration  
(LAC 50:V.5313, 5513, 5713, 5913 and 6115)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5313, §5513, §5713, §5913 and §6115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state public hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike (*Louisiana Register*, Volume 35, Number 7).

The Department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to establish a Medicaid upper payment limit financing mechanism to provide supplemental payments to acute care general hospitals (*Louisiana Register*, Volume 36, Number 1). This initiative, known as the Low Income and Needy Care Collaboration, will provide supplemental payments to non-rural, non-state hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients. This Emergency Rule is being promulgated to continue the provisions of the January 1, 2010 Emergency Rule.

This action is being taken to secure new federal funding and to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective August 31, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5313. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

**Chapter 55. Clinic Services**

**Subchapter B. Reimbursement Methodology**

**§5513. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-

rural, non-state hospitals for clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement<sup>1</sup>

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

**Chapter 57. Laboratory Services**

**Subchapter B. Reimbursement Methodology**

**§5713. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital



and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 36:1900 (September 2009), amended LR 36:

#### **Chapter 59. Rehabilitation Services**

##### **Subchapter B. Reimbursement Methodology**

###### **§5913. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

#### **Chapter 61. Other Outpatient Hospital Services**

##### **Subchapter B. Reimbursement Methodology**

###### **§6115. Non-Rural, Non-State Hospitals**

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 5.65 percent of the rates effective as of August 3, 2009. Final reimbursement shall be at 78.48 percent of allowable cost through the cost settlement process.

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries and rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for covered outpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Anthony Keck  
Secretary

1008#100

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Major Teaching Hospitals  
(LAC 50:V.6533)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.6533 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for outpatient hospital services rendered by acute care hospitals (*Louisiana Register*, Volume 22, Number 1). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to provide a supplemental Medicaid payment to non-rural, non-state acute care hospitals designated as major teaching hospitals to facilitate the development of public-private collaborations in order to preserve access to medically necessary services for Medicaid recipients (*Louisiana Register*, Volume 35, Number 10). The department amended the provisions of the October 1, 2009 Emergency Rule in order to revise which fiscal year's claims data the quarterly payments will be based. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging provider participation in the Medicaid Program so as to assure sufficient access to hospital services.

Effective September 18, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by non-rural, non-state hospitals designated as major teaching hospitals.

## Title 50 PUBLIC HEALTH—MEDICAL ASSISTANCE Part V. Hospital Services Subpart 5. Outpatient Hospitals

### Chapter 65. Teaching Hospitals Subchapter B. Reimbursement Methodology §6533. Major Teaching Hospitals

A. Effective for dates of service on or after October 1, 2009, a quarterly supplemental payment shall be issued to qualifying non-rural, non-state acute care hospitals for outpatient services rendered during the quarter. These payments shall be used to facilitate the development of public-private collaborations to preserve access to medically necessary services for Medicaid recipients. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must:

- a. be designated as a major teaching hospital by the department in state fiscal year 2009;
- b. have provided at least 25,000 Medicaid acute care paid days for state fiscal year 2008 dates of service;
- c. have provided at least 4,000 Medicaid distinct part psychiatric unit paid days for state fiscal year 2008 dates of service; and
- d. provided at least 20,000 Medicaid outpatient paid visits for state fiscal year 2008 dates of service.

2. Payments shall be distributed quarterly based on Medicaid paid claims data from service dates in state fiscal year 2009.

3. Payments are applicable to Medicaid service dates provided during each quarter and shall be discontinued for the remainder of the state fiscal year in the event that the maximum payment cap is reached or by June 30, 2011, whichever occurs first.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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

Anthony Keck  
Secretary

1008#101

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services—Small Rural Hospitals  
Upper Payment Limit  
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, 5511, 5711, 5911, and 6113 in the Medical Assistance Program as

authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for outpatient hospital services (*Louisiana Register*, Volume 35, Number 5). Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department proposes to amend the provisions governing the reimbursement methodology for small rural hospitals to reimburse outpatient hospital services up to the Medicare outpatient upper payment limits.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services. It is estimated that the implementation of this proposed Rule will increase expenditures for outpatient hospital services by approximately \$10,422,180 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospitals**

#### **Subpart 5. Outpatient Hospitals**

#### **Chapter 53. Outpatient Surgery**

#### **Subchapter B. Reimbursement Methodology**

#### **§5311. Small Rural Hospitals**

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital surgery services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 55. Clinic Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5511. Small Rural Hospitals**

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital clinic services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 57. Laboratory Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5711. Small Rural Hospitals**

A. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient clinical diagnostic laboratory services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 59. Rehabilitation Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§5911. Small Rural Hospitals**

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for rehabilitation services up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§6113. Small Rural Hospitals**

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees up to the Medicare outpatient upper payment limits.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for

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

Alan Levine  
Secretary

1008#029

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

#### Personal Care Services—Long-Term Policy Clarifications and Service Limit Reduction (LAC 50:XV.12901-12909 and 12911-12915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12901-12909 and §§12911-12915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing the Long-Term Personal Care Services (LT-PCS) Program. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the LT-PCS Program to: 1) implement uniform needs-based assessments for authorizing service units; 2) reduce the limit on LT-PCS service hours; 3) mandate that providers must show cause for refusing to serve clients; and 4) incorporate provisions governing an allocation of weekly service hours (*Louisiana Register*, Volume 35, Number 11).

The department now proposes to amend the provisions governing long-term personal care services to: 1) establish provisions that address requests for services; 2) revise the eligibility criteria for LT-PCS; 3) clarify the provisions governing restrictions for paid direct care staff and the place of service; and 4) reduce the maximum allowed service hours. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$5,193,352 for state fiscal year 2010-2011.

Effective September 5, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing long-term personal care services.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

##### Subpart 9. Personal Care Services

#### Chapter 129. Long Term Care

##### §12901. General Provisions

A. The purpose of personal care services is to assist individuals with functional impairments with their daily living activities. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid and non-Medicaid services being provided to the recipient and will be considered in conjunction with those other services.

B. Each recipient requesting or receiving long-term personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the Level of Care Eligibility Tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC) or a subsequent assessment tool designated by OAAS. The MDS-HC is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score which measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment.

1. The late-loss ADLs are eating, toileting, transferring and bed mobility. An individual's assessment will generate a score from 4 through 15 which is representative of the individual's degree of self-performance on these four late-loss ADLs.

2. - 7. Repealed.

D. Based on the applicant/recipient's uniform assessment score, he/she is assigned to a level of support category and is eligible for a set allocation of weekly service hours associated with that level.

1. If the applicant/recipient is allocated less than 32 hours per week and believes that he/she is entitled to more hours, the applicant/recipient or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may only obtain additional hours upon showing that the:

- a. assessment was inaccurate and the resulting allocation methodology was incorrectly applied; and
- b. correct application of the methodology would result in additional hours.

E. Requests for personal care services shall be accepted from the following individuals:

1. a Medicaid recipient who wants to receive personal care services;
2. an individual who is legally responsible for a recipient who may be in need of personal care services; or

3. a responsible representative designated by the recipient to act on his/her behalf in requesting personal care services.

F. Each recipient who requests PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the recipient's business without his/her involvement.

b. The written designation is valid until revoked by the recipient. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the recipient in the assessment, care plan development and service delivery processes; and

b. to aid the recipient in obtaining all necessary documentation for these processes.

3. The paid PCS worker providing services to a recipient may not act as the recipient's responsible representative.

4. An owner or employee of a personal care attendant services agency may not be designated as a responsible representative for any recipient who receives personal care services from an agency he/she owns or is employed by.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 36:

#### **§12902. Participant Direction Option**

A. The Office of Aging and Adult Services implements a pilot program, the Louisiana Personal Options Program (La POP), which will allow recipients who receive long term personal care services (LT-PCS) to have the option of utilizing an alternative method to receive and manage their services. Recipients may direct and manage their own services by electing to participate in La POP, rather than accessing their services through a traditional personal care agency.

1. La POP shall be implemented through a phase-in process in Department of Health and Hospitals administrative regions designated by OAAS.

A.2. – B.1....

2. With the assistance of a services consultant, participants develop a personal support plan based on their approved plan of care and choose the individuals they wish to hire to provide the services.

C. - E.1. ...

2. Change in Condition. The participant's ability to direct his/her own care diminishes to a point where he/she can no longer do so and there is no responsible representative available to direct the care.

3. Misuse of Monthly Allocation of Funds. The LA POP participant or his/her responsible representative uses the monthly budgeted funds to purchase items unrelated to personal care needs or otherwise misappropriate the funds.

4. Failure to Provide Required Documentation. The participant or his/her responsible representative fails to complete and submit employee time sheets in a timely and accurate manner, or provide required documentation of expenditures and related items as prescribed in the Louisiana Personal Options Program's Roles and Responsibility agreement.

5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008) amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§12903. Covered Services**

A. Personal care services are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by the recipient. ADLs include tasks such as:

1. - 7. ...

B. IADLs are those activities that are considered essential, but may not require performance on a daily basis. IADLs cannot be performed in the recipient's home when he/she is absent from the home. IADLs include tasks such as:

1. light housekeeping;
2. food preparation and storage;
3. shopping;
4. laundry;
5. assisting with scheduling medical appointments when necessary;

6. accompanying the recipient to medical appointments when necessary;

7. assisting the recipient to access transportation; and

8. reminding the recipient to take his/her medication as prescribed by the physician.

C. Emergency and nonemergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

1. La POP participants may choose to use some of their monthly budget to purchase non-medical transportation.

a. If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

D. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§12905. Eligibility Criteria**

A. ...

B. Recipients must meet the eligibility criteria established by OAAS or its designee. Personal care services are medically necessary if the recipient:

B.1. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§12907. Recipient Rights and Responsibilities**

A. - A.2. ...

3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while maintaining him/her in the home;

4. developing an emergency component in the plan of care that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled worker from providing services;

5. - 9. ...

B. Changing Providers. Recipients may request to change PCS agencies without cause once after each three month interval during the service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the plan of care. Good cause shall be determined by OAAS or its designee.

C. In addition to these rights, a La POP participant has certain responsibilities, including:

1. ...

2. notifying the services consultant at the earliest reasonable time of admission to a hospital, nursing facility, rehabilitation facility or any other institution;

2.a. - 8. ...

9. training the direct service worker in the specific skills necessary to maintain the participant's independent functioning to remain in the home;

10. - 13. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

#### **§12909. Standards for Participation**

A. - A.1.c. ...

d. the policy and procedures contained in the Personal Care Services provider manual or memorandums;

A.2. - B.12.c. ...

C. An LT-PCS provider shall not refuse to serve any individual who chooses his agency unless there is documentation to support an inability to meet the individual's needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

C.1. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 36:

#### **§12911. Staffing Requirements**

A. - B.3. ...

C. Restrictions. The following persons are prohibited from serving as the paid direct service worker for a recipient:

1. the recipient's spouse;
2. the recipient's curator;
3. the recipient's tutor;
4. the recipient's legal guardian;
5. the recipient's responsible representative; or
6. the person to whom the recipient has given

Representative and Mandate authority (also known as Power of Attorney).

D. - E.1.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

## §12912. Training

A. - C.6. ...

D. New direct care staff must also receive training in cardiopulmonary resuscitation (CPR) and basic first aid within one week of employment. A current, valid certification for CPR and first aid may be accepted as verification of training. This CPR and first aid certification must be maintained and kept current as long as the direct service worker is employed with the PCS agency.

E. - E.7. ...

8. maintenance of a clean environment; and

E.9. - G.3.c. ...

4. New La POP direct service workers must also receive training in cardiopulmonary resuscitation (CPR) and basic first aid within one week of employment. A current, valid certification for CPR and first aid may be accepted as verification of training. This CPR and first aid certification must be maintained and kept current throughout the worker's employment period as a La POP personal care service worker.

G.5. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

## §12913. Service Delivery

A. Personal care services shall be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient's home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. IADLs cannot be performed in the recipient's home when the recipient is absent from the home.

1. - 4. Repealed.

B. ...

C. Participants are not permitted to receive LT-PCS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

C.1. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:2833 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:

## §12915. Service Limitations

A. Personal care services shall be limited to up to 32 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient's plan of care and supporting documentation.

B. There shall be no duplication of services.

1. Personal care services may not be provided while the recipient is admitted to or attending a program which

provides in-home assistance with IADLs or ADLs or while the recipient is admitted to or attending a program or setting where such assistance is available to the recipient.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Anthony Keck  
Secretary

1008#102

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Personal Care Services—Long-Term  
Reimbursement Rate Reduction  
(LAC 50:XV.12917)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the reimbursement methodology for long-term personal care services (LT-PCS) to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 6).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for long-term personal care services to further reduce the reimbursement rates. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$7,244,319 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH-MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 9. Personal Care Services**

#### **Chapter 129. Long-Term Care**

##### **§12917. Reimbursement Methodology**

A. - E. ...

F. Effective for dates of service on or after August 1, 2010, the reimbursement rate for long-term personal care services shall be reduced by 4.6 percent of the rate on file as of July 31, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), LR 36:1251 (June 2010), LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#027

#### **DECLARATION OF EMERGENCY**

##### **Department of Health and Hospitals Bureau of Health Services Financing**

Pregnant Women Extended Services  
Dental Services—Reimbursement Rate Reduction  
(LAC 50:XV.16107)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.16107 in the Medical Assistance Program as authorized by R.S. 36:254

and pursuant to Title XIX of the Social Security Act and as directed by Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the Pregnant Women Extended Services Dental Program to include coverage of two additional dental procedures, increase the reimbursement fees for designated dental services and clarify the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for dental services to reduce the reimbursement rates for services provided to Medicaid eligible pregnant women (*Louisiana Register*, Volume 36, Number 2).

As a result of a budgetary shortfall in state fiscal year 2011, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for dental services to further reduce the reimbursement rates for services provided to Medicaid eligible pregnant women. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$106,636 for state fiscal year 2010-2011.

Effective August 1, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for dental services provided to Medicaid eligible pregnant women in order to reduce the reimbursement rates.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 13. Pregnant Women Extended Services**

#### **Chapter 161. Dental Services**

##### **§16107. Reimbursement**

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2008 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 73 percent for the comprehensive periodontal evaluation exam;



2. 70 percent for the following diagnostic services:
  - a. intraoral-periapical first film;
  - b. intraoral-periapical, each additional film; and
  - c. panoramic film and prophylaxis, adult; and
3. 65 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:
  - a. intraoral, occlusal film;
  - b. bitewings, two films;
  - c. amalgam (one, two or three surfaces) primary or permanent;
  - d. amalgam (four or more surfaces);
  - e. resin-based composite (one, two or three surfaces), anterior;
  - f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
  - g. resin-based composite crown, anterior;
  - h. resin-based composite (one, two, three, four or more surfaces), posterior;
  - i. prefabricated stainless steel crown, primary or permanent tooth;
  - j. prefabricated resin crown;
  - k. periodontal scaling and root planning (four or more teeth per quadrant);
  - l. full mouth debridement to enable comprehensive evaluation and diagnosis;
  - m. extraction, coronal remnants-deciduous tooth;
  - n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
  - o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
  - p. removal of impacted tooth, soft tissue; and
  - q. removal of impacted tooth, partially bony.

E. Effective for dates of service on or after August 1, 2010, the reimbursement fees for dental services provided to Medicaid eligible pregnant women shall be reduced to the following percentages of the 2009 National Dental Advisory Service Comprehensive Fee Report 70th percentile, unless otherwise stated in this Chapter:

1. 69 percent for the comprehensive periodontal evaluation exam;
2. 65 percent for the following diagnostic services:
  - a. intraoral-periapical first film;
  - b. intraoral-periapical, each additional film; and
  - c. panoramic film and prophylaxis, adult; and
3. 58 percent for the remaining diagnostic services and all periodontic procedures, restorative and oral and maxillofacial surgery procedures which includes the following dental services:
  - a. intraoral, occlusal film;
  - b. bitewings, two films;
  - c. amalgam (one, two or three surfaces) primary or permanent;
  - d. amalgam (four or more surfaces);
  - e. resin-based composite (one, two or three surfaces), anterior;
  - f. resin-based composite (four or more surfaces) or involving incisal angle, anterior;
  - g. resin-based composite crown, anterior;

- h. resin-based composite (one, two, three, four or more surfaces), posterior;
- i. prefabricated stainless steel crown, primary or permanent tooth;
- j. prefabricated resin crown;
- k. periodontal scaling and root planning (four or more teeth per quadrant);
- l. full mouth debridement to enable comprehensive evaluation and diagnosis;
- m. extraction, coronal remnants-deciduous tooth;
- n. extraction, erupted tooth or exposed root (elevation and/or forceps removal);
- o. surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth;
- p. removal of impacted tooth, soft tissue; and
- q. removal of impacted tooth, partially bony.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1902 (September 2009), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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

Alan Levine  
Secretary

1008#007

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program—Anesthesia Services  
Reimbursement Methodology  
(LAC 50:IX.15133)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15133 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to physicians (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*,

Volume 36, Number 6). The department promulgated an Emergency Rule which amended the provisions governing anesthesia services in order to revise the formula-based reimbursement methodology for services rendered by physicians and certified registered nurse anesthetists (CRNAs). In addition, the provisions governing anesthesia services were repromulgated, in their entirety, in Subchapter D of LAC 50:IX.Chapter 151 in order to reorganize these provisions in a clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 36, Number 2)*. The department subsequently amended the provisions of the January 22, 2010 Emergency Rule to clarify the language governing formula-based reimbursement (*Louisiana Register, Volume 36, Number 5*). This Emergency Rule is being promulgated to amend the provisions of the May 20, 2010 Emergency Rule to revise the formatting of LAC 50:IX.15133 as a result of the promulgation of the June 20, 2010 final Rule governing the reimbursement methodology for anesthesia services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective August 20, 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the May 20, 2010 Emergency Rule governing the reimbursement methodology for anesthesia services.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part IX. Professional Services Program**

##### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

##### **Subchapter D. Anesthesia Services**

#### **§15133. Formula-Based Reimbursement**

A. ...

B. Effective for dates of service on or after January 22, 2010, the reimbursement for formula-based anesthesia services rendered by a physician shall be:

1. 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients ages 16 and older; and

2. 90 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients under the age of 16.

C. Effective for dates of service on or after January 22, 2010, the reimbursement for formula-based anesthesia services rendered by a CRNA shall be:

1. 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients ages 16 and older; and

2. 90 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients under the age of 16.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1251 (June 2010), amended LR 36:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box

91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Anthony Keck  
Secretary

1008#103

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

##### **Professional Services Program—Physician Services Reimbursement Rate Reduction (LAC 50:IX.15113)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adjusted the reimbursement rates paid for physician services (*Louisiana Register, Volume 35, Number 8*). The final Rule was published June 20, 2010 (*Louisiana Register, Volume 36, Number 6*). As a result of a continuing budgetary shortfall, the bureau promulgated an Emergency Rule which amended the provisions governing the Professional Services Program in order to further reduce the reimbursement rates paid for physician services (*Louisiana Register, Volume 36, Number 2*). That Emergency Rule also repromulgated the provisions, in their entirety, in Subchapter B of LAC 50:IX.Chapter 151 in order to reorganize these provisions in a clear and concise manner in the *Louisiana Administrative Code*. The department amended the January 22, 2010 Emergency Rule to clarify the provisions governing reimbursement of physician services rendered to recipients 16 years of age or older (*Louisiana Register, Volume 36, Number 5*). This Emergency Rule is being promulgated to amend the May 20, 2010 Emergency Rule to revise the formatting of LAC 50:IX.15113 as a result of the promulgation of the June 20, 2010 final Rule. This action is

being taken to ensure that these provisions are appropriately adopted into the *Louisiana Administrative Code*.

Effective August 20, 2010 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the May 20, 2010 Emergency Rule governing the reimbursement methodology for physician services.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 15. Reimbursement**

**Chapter 151. Reimbursement Methodology**

**Subchapter B. Physician Services**

**§15113. Reimbursement**

A. - D.3.b. ...

E. Effective for dates of service on or after January 22, 2010, physician services rendered to recipients 16 years of age or older shall be reduced to 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. The following physician services rendered to recipients 16 years of age or older shall be reimbursed at 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount:

- a. prenatal evaluation and management services;
- b. preventive medicine evaluation and management services; and
- c. obstetrical delivery services.

F. Effective for dates of service on or after January 22, 2010, all physician services rendered to recipients under the age of 16 shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

G. Effective for dates of service on or after January 22, 2010, all physician-administered drugs shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Average Sales Price (ASP) allowable or billed charges, whichever is the lesser amount.

H. Effective for dates of service on or after January 22, 2010, all physician services that are currently reimbursed below the reimbursement rates in §15113.E-G shall be increased to the rates in §15113.E-G.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:

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

Anthony Keck  
Secretary

1008#104

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Prosthetics and Orthotics—Reimbursement Rate Reduction  
(LAC 50:XVII.501)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9). As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates for prosthetic and orthotic devices (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6)

As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for prosthetics and orthotics to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). The department amended the provisions of the January 22, 2010 Emergency Rule in order to revise the formatting of LAC 50:XVII.501 to place these provisions in the proper location in the *Louisiana Administrative Code (LAC)* (*Louisiana Register*, Volume 36, Number 5). The department now proposes to amend the May 20, 2010 Emergency Rule to revise the formatting of LAC 50:IX.501 as a result of the promulgation of the June 20, 2010 final Rule. This action is being taken to ensure that these provisions are appropriately adopted into the LAC.

Effective August 20, 2010 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the May 20, 2010 Emergency Rule governing the reimbursement methodology for prosthetics and orthotics.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XVII. Prosthetics and Orthotics**  
**Subpart 1. General Provisions**

**Chapter 5. Reimbursement**

**§501. Reimbursement Methodology**

A. - E.1 ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement for prosthetic and orthotic devices shall be reduced by 5 percent of the fee amounts on file as of January 21, 2010.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), repromulgated LR 36:521 (March 2010), amended LR 36:1253 (June 2010), amended LR 36:

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

Anthony Keck  
Secretary

1008#105

**DECLARATION OF EMERGENCY**

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

2010 Fall Inshore Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or parts of state inside waters and shall have the authority to open or close state outside waters, the Wildlife and Fisheries Commission does hereby set the 2010 Fall Shrimp Season in inside waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River, to open at 6:00 a.m. August 16, 2010; and

Shrimp Management Zone 2, that portion of state inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at 6:00 a.m. August 16, 2010; and

Shrimp Management Zone 3, that portion of state inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at 6:00 a.m. August 16, 2010.

The commission also hereby sets the closing date for the 2010 Fall Shrimp Season in inside waters in Zones 1, 2 and 3 at official sunset December 21, 2010 except in the open waters of Breton and Chandeleur Sounds as described by the double-rig line (LA R.S. 56:495.1(A)(2)) which shall remain open until 6:00 a.m., March 31, 2011. The commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters.

Stephen J. Oats  
Chairman

1008#038

**DECLARATION OF EMERGENCY**

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

Closing Portions of Zones 1 and 3 to Shrimping

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and a resolution adopted by the Wildlife and Fisheries Commission on May 6, 2010 which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2010 Spring Inshore Shrimp Season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or if enforcement problems develop, the Secretary hereby declares:

The 2010 spring inshore shrimp season within Shrimp Management Zones 1 and 3 will close on July 20, at 6:00 a.m. except for that portion of Zone 1 including Lake Pontchartrain, Rigoletes Pass from the mouth of Lake Pontchartrain extending eastward to the western side of the CSX Railway Bridge, and Chef Menteur Pass from the mouth of Lake Pontchartrain southeasterly to the mouth of Lake Borgne, and Pass Manchac east of the railroad bridge, and that portion of Mississippi Sound beginning at a point on the Louisiana-Mississippi Lateral Boundary at latitude 30 degrees 09 minutes 39.6 seconds north and longitude 89 degrees 30 minutes 00.0 seconds west; thence due south to a point at latitude 30 degrees 05 minutes 00.0 seconds north and longitude 89 degrees 30 minutes 00.0 seconds west; thence southeasterly to a point on the western shore of Three-Mile Pass at latitude 30 degrees 03 minutes 00.0 seconds north and longitude 89 degrees 22 minutes 23.0 seconds west; thence northeasterly to a point on Isle Au Pitre at latitude 30 degrees 09 minutes 20.5 seconds north and longitude 89 degrees 11 minutes 15.5 seconds west, which is a point on the double-rig line as described in R.S. 56:495.1(A)2; thence northerly along the double-rig line to a point on the Louisiana-Mississippi Lateral Boundary at latitude 30 degrees 12 minutes 37.9056 seconds north and longitude 89 degrees 10 minutes 57.9725 seconds west;

thence westerly along the Louisiana-Mississippi Lateral Boundary to the point of beginning, and the open waters of Breton and Chandeleur Sounds as described by the double-rig line, and all of Zone 3 except for that portion of the Calcasieu Ship Channel originating at a line between Channel Markers 85 and 86 southward to a point originating along the inside/outside shrimp line at Calcasieu Pass as described in LA R.S. 56:495(A) and including East Pass from its origin at the Calcasieu Ship Channel to the south end of Calcasieu Lake and West Pass from its origin at the Calcasieu Ship Channel to the south end of West Cove, and that portion of Cameron Parish west of Calcasieu Lake. The State outside waters south of the Inside/Outside Shrimp Line, as described in R.S. 56:495 shall also remain open to shrimping. Portions of these waters where the shrimp season is extended as well as portions of State outside waters remain closed to commercial fishing due to the Deepwater Horizon drilling rig accident; and commercial shrimping in these waters is prohibited until such time as may be authorized by the Secretary or the Wildlife and Fisheries Commission.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples within those portions of Zones 1 and 3 to be closed has rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Robert J. Barham  
Secretary

1008#002

## **DECLARATION OF EMERGENCY**

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

Commercial Fisheries Closure;  
Recreational Fishing Opens

In accordance with the emergency provisions of R.S. 49:953(B) and R.S.49:967(D) of the Administrative Procedure Act, and under the authority of R.S. 56:6.1 which provides the Secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found or existing in the waters of the state, and that declaration of emergency adopted by the Wildlife and Fisheries Commission on July 14, 2010, the Secretary of the Department of Wildlife and Fisheries hereby closes all commercial fishing, effective immediately July 22, 2010, in the following area: That portion of state outside waters seaward of the inside/outside shrimp line from the Mississippi/Louisiana state line westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude, and that portion of saltwater areas of the state east of the Mississippi River north of the southern shore of the Mississippi River Gulf Outlet and the southern shore of Lake Pontchartrain from the double rig line as described in R.S. 56:495.1 westward to 89 degrees 51 minutes 35 seconds west longitude and the US Highway 11 bridge in Lake Pontchartrain, and that portion of state inside waters east of the Mississippi River south of the southern shore of the Mississippi River Gulf Outlet and north of 29 degrees 38 minutes 12 seconds north latitude from the

double rig line as described in R.S. 56:495.1 westward to 89 degrees 42 minutes 32 seconds west longitude near the western shore of the twin pipeline canals, and that portion of state inside waters from 89 degrees 28 minutes 06 seconds west longitude near Sable Island eastward to the eastern shore of South Pass of the Mississippi River, and that portion of Breton and Chandeleur Sounds as described by the double rig line in R.S. 56:495.1, and that portion of state inside waters west of the eastern shore of South Pass of the Mississippi River westward to the southern shoreline of Red Pass at 89 degrees 28 minutes 13.4 seconds west longitude, and that portion of state inside waters south of 29 degrees 30 minutes 00 seconds north latitude from the western shoreline of Grand Bayou westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 35 minutes 00 seconds north latitude from 89 degrees 52 minutes 00 seconds west longitude westward to the eastern shoreline of the Barataria Waterway, and that portion of state inside waters south of 29 degrees 18 minutes 30 seconds north latitude from the eastern shoreline of the Barataria Waterway westward to 90 degrees 00 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 16 minutes 00 seconds north latitude from 90 degrees 00 minutes 00 seconds west longitude westward to the eastern shore of Bayou Lafourche, and that portion of state inside waters south of 29 degrees 12 minutes 50 seconds north latitude from the eastern shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside waters south of 29 degrees 21 minutes 42 seconds north latitude from the western shore of Grand Bayou Blue and 90 degrees 17 minutes 50 seconds west longitude westward to the eastern shore of Bayou Terrebonne, and that portion of state inside waters south of 29 degrees 21 minutes 00 seconds north latitude from the eastern shore of Bayou Terrebonne westward to the western shore of Bayou Petit Caillou, and that portion of state inside waters south of 29 degrees 13 minutes 12 seconds from the western shore of Bayou Petit Caillou and the Houma Navigation Canal red buoy line westward to 91 degrees 07 minutes 48 seconds west longitude.

Effective with the closure, no person shall take or possess or attempt to take any species of fish for commercial purposes from waters within the closed area. The possession, sale, barter, trade, or exchange of any fish or other aquatic life from the closed area during the closure is prohibited, except as provided herein. Recreational fishing shall be allowed in accordance with the provisions contained herein.

Except in those areas described below, recreational fishing is being allowed within the above described area. The Environmental Protection Agency's nearshore water tests to date have shown no chemical contamination and this area will remain open subject to continual testing and monitoring, as this activity is not regulated by the Food and Drug Administration. Although recreational fishing will be allowed in portions of the commercially closed areas described in this declaration, certain delineated areas, including heavily oiled areas, areas associated with containment and absorbent boom and areas of active cleanup shall remain closed to recreational fishing. Those areas where recreational fishing shall remain closed are as follows: that portion of state inside and outside waters north

of 29 degrees 59 minutes 30 seconds north latitude and south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile west from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside waters south of the northern shore of Pass-a-Loutre and the Mississippi River Channel at 29 degrees 09 minutes 00 seconds north latitude and east of the western shoreline of Southwest Pass of the Mississippi River, and that portion of state outside waters south of 29 degrees 12 minutes 40 seconds north latitude and east of 89 degrees 25 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Water Way, and that portion of state inside and outside waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west longitude westward to 90 degrees 07 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 03 minutes 00 seconds north latitude and south of 29 degrees 09 minutes 00 seconds north latitude from the 90 degrees 13 minutes 30 seconds west longitude and the western shore of Bayou Lafourche westward to 90 degrees 34 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 05 minutes 00 seconds north latitude from 90 degrees 37 minutes 00 seconds west longitude westward to 90 degrees 58 minutes 00 seconds west longitude.

This opening shall include licensed charter boat guides, and shall authorize harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329. In those areas open to recreational fishing, the commission and the secretary advise as follows: That recreational fishermen use an abundance of caution when considering to fish in areas closed to commercial fishing, as oil may be present in those areas, which could present a risk of immediate skin contact or inhalation of air borne hydrocarbons. Avoid areas where oil is observed, respect oil cleanup and removal activities and stay clear of areas being protected by boom material. Smell and examine catch closely to ensure that there are no obvious oil or chemical

residues. Recreational fishermen fishing in areas closed to commercial fishermen do so at their own risk.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to fish and other aquatic life.

This action is taken in coordination with Louisiana Department of Health and Hospitals. Governor Jindal in a declaration of emergency issued on April 29, 2010 stated in part that "a declaration that a state of emergency exists is appropriate due to the predicted impact of oil along the Louisiana coast leaking from the Deepwater Horizon which threatens the state's natural resources, including land, water, fish, wildlife, fowl and other birds, and likewise threatens the livelihoods of Louisiana's citizens living along the coast which increases the economic impact of this incident".

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Robert J. Barham  
Secretary

1008#028

## **DECLARATION OF EMERGENCY**

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

#### **Commercial Fisheries Opening**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:6.1 which provides the Secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found or existing in the waters of the state, and a declaration of emergency adopted by the Wildlife and Fisheries Commission on July 14, 2010 which grants authority to the secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the secretary hereby opens to all commercial fishing except for the harvest of crabs and oysters that portion of state inside and outside waters north of the northern shore of Pass A Loutre and 29 degrees 12 minutes 40 seconds north latitude and south of the northern shores of Lake Pontchartrain and Rigolets Pass and the Louisiana/Mississippi state line from the Louisiana territorial sea boundary westward to a line beginning along the U.S. Hwy 11 bridge in Lake Pontchartrain southward to 89 degrees 51 minutes 35 seconds west longitude, thence southward along 89 degrees 51 minutes 35 seconds west longitude to the southern shore of the Mississippi River Gulf Outlet, thence southeastward along the southern shore of the Mississippi River Gulf Outlet

to 89 degrees 42 minutes 32 seconds west longitude, thence southward along 89 degrees 42 minutes 32 seconds west longitude to 29 degrees 38 minutes 12 seconds north latitude, thence eastward along 29 degrees 38 minutes 12 seconds north latitude to Mozambique Point at 89 degrees 28 minutes 27.4 seconds west longitude, thence southward along the double-rig line as described in R.S. 56:495.1 to California Point at 29 degrees 27 minutes 21.7 seconds north latitude and 89 degrees 31 minutes 19.7 seconds west longitude, thence southeastward to Sable Island at 29 degrees 24 minutes 03 seconds north latitude and 89 degrees 28 minutes 06 seconds west longitude, thence southward along 89 degrees 28 minutes 06 seconds west longitude to the eastern shore of the Mississippi River, thence southward along the eastern shore of the Mississippi River to the northern shore of Pass a Loutre effective July 29, 2010, except for that portion of state inside and outside waters north of 29 degrees 59 minutes 30 seconds north latitude and south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile westward from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 47 minutes 00 seconds north latitude and south of 29 degrees 51 minutes 00 seconds north latitude from 89 degrees 15 minutes 00 seconds west longitude westward to 89 degrees 22 minutes 00 seconds west longitude which will remain closed to all commercial fishing until further notice.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and are continuing to be made to minimize the potential threats to fish and other aquatic life. The secretary has determined that this portion of state inside and outside waters shall open to commercial fishing effective July 29, 2010.

Robert J. Barham  
Secretary

1008#034

## **DECLARATION OF EMERGENCY**

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

#### **Commercial Spotted Seatrout Rod and Reel Fishery**

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:325.3,

and 56:326.3, adopts the Declaration of Emergency set forth below to set the opening date for the commercial harvest of spotted seatrout. These actions become effective on August 15, 2010, the effective date of Act 979.

Effective August 15, 2010, the commercial season for the harvest of spotted seatrout shall open, and remain open until the maximum annual quota is reached, or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached.

The following modifications are established as a modification to the existing rules under the Louisiana Administrative Code Title 76 for harvest of spotted seatrout, in order to have consistent rules with the legislative rules established under the Louisiana Revised Statutes Title 56 by Act 979.

## **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishing §341. Spotted Seatrout Management Measures**

##### **A. Commercial Season; Quota; Permits**

1. The commercial season for spotted seatrout whether taken from within or without Louisiana state waters shall remain closed until January 2 of each year, when it shall open and remain open until the maximum annual quota is reached, or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever comes first. The commercial harvest or taking of spotted seatrout is prohibited during the period from sunset on Friday through sunrise on Monday, and there shall be no possession of spotted seatrout in excess of the recreational limit during the period between 10:00 p.m. and 5:00 a.m.

2.-3.d. ...

4. The commercial taking or commercial harvesting of spotted seatrout shall be prohibited within Louisiana waters west of the Mermentau River.

##### **B. - C. ...**

**AUTHORITY NOTE:** Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S.56:6(25)(a); R.S. 56:306.5, R.S. 56:306.6, 56:325.1(A) and (B); R.S. 56:325.3; R.S. 56:326.3; Act 1316 of the 1995 Regular Legislative Session; and Act 1164 of the 2003 Regular Legislative Session.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:238 (March 1996), LR 24:360 (February 1998), LR 26:2333 (October 2000), LR 30:1509 (July 2004), LR 30:2498 (November 2004), repromulgated LR 32:125 (January 2006), amended LR 32:1071 (June 2006).

The Secretary of the Department of Wildlife and Fisheries is authorized and directed to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Declaration of Emergency, including but not limited to, the preparation of reports and correspondence to other agencies of government, and the effectuation of the provisions of this Declaration of Emergency for the duration of this season.

Stephen J. Oats  
Chairman

1008#040

## DECLARATION OF EMERGENCY

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

#### Commission Commercial and Recreational Fishing

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes all commercial fishing, effective immediately August 5, 2010, in the following area:

That portion of state inside and outside waters east of the Mississippi River north of 29 degrees 59 minutes 30 seconds north latitude and south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile westward from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 47 minutes 00 seconds north latitude and south of 29 degrees 51 minutes 00 seconds north latitude from 89 degrees 15 minutes 00 seconds west longitude westward to 89 degrees 22 minutes 00 seconds west longitude, and that portion of state outside waters seaward of the inside/outside shrimp line from the mouth of Pass a Loutre at 29 degrees 12 minutes 40 seconds north latitude westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude, and that portion of state inside waters south of the northern shore of Pass a Loutre and the Mississippi River Channel at 29 degrees 09 minutes 00 seconds north latitude westward to the southern shore of Red Pass at 89 degrees 28 minutes 13.4 seconds west longitude, and that portion of state inside waters south of 29 degrees 30 minutes 00 seconds north latitude from the western shore of Grand Bayou westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 35 minutes 00 seconds north latitude from 89 degrees 52 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside waters south of 29 degrees 18 minutes 30 seconds north latitude from the eastern shoreline of the Barataria Waterway westward to 90 degrees 00 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 16 minutes 00 seconds north latitude from 90 degrees 00 minutes 00 seconds west longitude westward to the eastern shore of Bayou Lafourche, and that portion of state inside waters south of 29 degrees 12 minutes 50 seconds north latitude from the eastern shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside waters south of 29 degrees 21 minutes 42 seconds north latitude from the western shore of Grand Bayou Blue and 90 degrees 17 minutes 50 seconds west longitude westward to the eastern

shore of Bayou Terrebonne, and that portion of state inside waters south of 29 degrees 21 minutes 00 seconds north latitude from the eastern shore of Bayou Terrebonne westward to the western shore of Bayou Petit Caillou, and that portion of state inside waters south of 29 degrees 13 minutes 12 seconds from the western shore of Bayou Petit Caillou and the Houma Navigation Canal red buoy line westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude. However, the commercial harvest of crabs and oysters is prohibited in that portion of state inside and outside waters east of the Mississippi River north of the northern shore of Pass a Loutre and 29 degrees 12 minutes 40 seconds north latitude and south of the northern shores of Lake Pontchartrain and Rigolets Pass and the Louisiana/Mississippi state line from the Louisiana territorial sea boundary westward to a line beginning along the U.S. Hwy 11 bridge in Lake Pontchartrain southward to 89 degrees 51 minutes 35 seconds west longitude, thence southward along 89 degrees 51 minutes 35 seconds west longitude to the southern shore of the Mississippi River Gulf Outlet, thence southeastward along the southern shore of the Mississippi River Gulf Outlet to 89 degrees 42 minutes 32 seconds west longitude, thence southward along 89 degrees 42 minutes 32 seconds west longitude to 29 degrees 38 minutes 12 seconds north latitude, thence eastward along 29 degrees 38 minutes 12 seconds north latitude to Mozambique Point at 89 degrees 28 minutes 27.4 seconds west longitude, thence southward along the double-rig line as described in R.S. 56:495.1 to California Point at 29 degrees 27 minutes 21.7 seconds north latitude and 89 degrees 31 minutes 19.7 seconds west longitude, thence southeastward to Sable Island at 29 degrees 24 minutes 03 seconds north latitude and 89 degrees 28 minutes 06 seconds west longitude, thence southward along 89 degrees 28 minutes 06 seconds west longitude to the eastern shore of the Mississippi River, thence southward along the eastern shore of the Mississippi River to the northern shore of Pass a Loutre.

Effective with the closure, no person shall take or possess or attempt to take any species of fish for commercial purposes from waters within the closed area. The possession, sale, barter, trade, or exchange of any fish or other aquatic life from the closed area during the closure is prohibited, except as provided herein. Recreational fishing shall be allowed in accordance with the provisions contained herein.

Except in those areas described below, recreational fishing is being allowed within the above described areas. The Environmental Protection Agency's nearshore water tests to date have shown no chemical contamination and this area will remain open subject to continual testing and monitoring, as this activity is not regulated by the Food and Drug Administration. Although recreational fishing will be allowed in portions of the commercially closed areas described in this declaration, certain delineated areas, including heavily oiled areas, areas associated with containment and absorbent boom and areas of active cleanup shall remain closed to recreational fishing. Those areas where recreational fishing shall remain closed are as follows: that portion of state inside and outside waters north of 29 degrees 59 minutes 30 seconds north latitude and south of the Mississippi/Louisiana state line from the Louisiana territorial sea boundary westward to 89 degrees 15 minutes



00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 36 minutes 30 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from the Louisiana territorial sea boundary westward to a line extending 1 mile westward from the western shore of the Chandeleur Islands, and that portion of state inside waters north of 29 degrees 45 minutes 00 seconds north latitude and south of 29 degrees 59 minutes 30 seconds north latitude from 89 degrees 09 minutes 00 seconds west longitude westward to 89 degrees 15 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 18 minutes 00 seconds north latitude and south of 29 degrees 22 minutes 00 seconds north latitude from 89 degrees 48 minutes 00 seconds west longitude westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters north of 29 degrees 23 minutes 00 seconds north latitude and south of 29 degrees 30 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to the eastern shore of the Barataria Waterway, and that portion of state inside and outside waters north of 29 degrees 08 minutes 15 seconds north latitude and south of 29 degrees 11 minutes 40 seconds north latitude from 90 degrees 03 minutes 00 seconds west longitude westward to 90 degrees 07 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 03 minutes 00 seconds north latitude and south of 29 degrees 09 minutes 00 seconds north latitude from 90 degrees 13 minutes 30 seconds west longitude and the western shore of Bayou Lafourche westward to 90 degrees 34 minutes 00 seconds west longitude, and that portion of state inside and outside waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 05 minutes 00 seconds north latitude from 90 degrees 37 minutes 00 seconds west longitude westward to 90 degrees 58 minutes 00 seconds west longitude.

Recreational fishing shall include licensed charter boat guides, and shall authorize harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329. In those areas open to recreational fishing, the commission and the secretary advise as follows: That recreational fishermen use an abundance of caution when considering to fish in areas closed to commercial fishing, as oil may be present in those areas, which could present a risk of immediate skin contact or inhalation of air borne hydrocarbons. Avoid areas where oil is observed, respect oil cleanup and removal activities and stay clear of areas being protected by boom material. Smell and examine catch closely to ensure that there are no obvious oil or chemical residues. Recreational fishermen fishing in areas closed to commercial fishing do so at their own risk.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to fish and other aquatic life.

This action is taken in coordination with Louisiana Department of Health and Hospitals. Governor Jindal in a

Declaration of Emergency issued on April 29, 2010 stated in part that "a declaration that a state of emergency exists is appropriate due to the predicted impact of oil along the Louisiana coast leaking from the Deepwater Horizon which threatens the state's natural resources, including land, water, fish, wildlife, fowl and other birds, and likewise threatens the livelihoods of Louisiana's citizens living along the coast which increases the economic impact of this incident".

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Stephen J. Oats  
Chairman

1008#041

## DECLARATION OF EMERGENCY

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

#### Early Migratory Seasons

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The hunting seasons for early migratory birds during the 2010-2011 hunting season shall be as follows:

Dove: The term "dove" refers to the following species, and only the following species: mourning doves, white-winged doves, Eurasian collared-doves, and ringed-turtle doves.

Dove South Zone:

September 4 - September 12;

October 16 - November 28;

December 18 - January 3.

Dove North Zone:

September 4 - September 19;

October 9 - November 7;

December 11 - January 3.

Bag Limit: Mourning and white-winged doves and fully dressed Eurasian collared-doves and ringed turtle-doves: daily bag limit 15 in aggregate, possession 30 in aggregate, but note: there is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed-turtle doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

Dove Hunting Zones: The state shall be divided into North and South Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La. Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi state line.

Teal: September 11 - September 26

Daily bag limit: 4; possession limit: 8; blue-winged, green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.

Rails: Split Season, Statewide, 70 days

September 11 - September 26

Remainder of season to be set in August with the duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate and possession 30 in the aggregate. Sora and Virginia: Daily and possession bag 25 in the aggregate.

Gallinules: Split Season, Statewide, 70 days

September 11 - September 26

Remainder of season to be set in August with the duck regulations.

Common and Purple: Daily bag limit 15 in the aggregate, possession of 30 in the aggregate.

Woodcock: December 18 - January 31, Statewide

Daily bag limit: 3; possession limit: 6.

Snipe: Deferred to be set in August with the duck regulations.

Extended Falconry Season

Mourning Doves: Statewide

September 20 - October 5

Woodcock: Split Season, Statewide

October 28 - December 17

February 1 - February 11

Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during the extended falconry seasons and regular hunting seasons. Remainder of extended falconry seasons for ducks, rails, gallinules to be set in August with the duck regulations.

Shooting and Hawking Hours:

Dove: One-half hour before sunrise to sunset except 12:00 noon to sunset September 4, 2010.

Teal, Rails, Gallinules, and Woodcock: One-half hour before sunrise to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 100,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2010 and extend through sunset on February 28, 2011.

Robert J. Barham  
Secretary

1008#036

## DECLARATION OF EMERGENCY

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

#### Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes R.S. 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is

hereby given that the Wildlife and Fisheries Commission hereby declare:

The 2010/2011 oyster season in the primary public oyster seed grounds east of the Mississippi River, as described in Louisiana Administrative Code (LAC) 76:VII.511 and LAC 76:VII.513, including the Lake Machias/Fortuna Sacking-Only Area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and the Sacking-Only Area in the American Bay area which shall be that portion of the public grounds within Bay Long west of a line running generally north/south from a point at 29 degrees 31 minutes 13.78 seconds N latitude, 89 degrees 34 minutes 9.79 seconds W longitude to a point at 29 degrees 29 minutes 40.67 seconds N latitude, 89 degrees 34 minutes and 8.48 seconds W longitude, shall open one-half hour before sunrise on November 15, 2010 and shall close at one-half hour after official sunset on April 1, 2011, except for the Bay Gardene Public Oyster Seed Reservation, as described in R.S. 56:434.E, and the 2009 cultch plant areas in Black Bay and Three-Mile Bay within the following coordinates, which shall remain closed:

#### 2009 Cultch Plant in Black Bay—Plaquemines Parish

1. 29 degrees 36 minutes 55.598 seconds N latitude  
89 degrees 32 minutes 30.482 seconds W longitude
2. 29 degrees 36 minutes 25.239 seconds N latitude  
89 degrees 32 minutes 12.858 seconds W longitude
3. 29 degrees 36 minutes 14.674 seconds N latitude  
89 degrees 32 minutes 47.070 seconds W longitude
4. 29 degrees 36 minutes 45.476 seconds N latitude  
89 degrees 33 minutes 02.681 seconds W longitude

#### 2009 Cultch Plant in Three-Mile Bay—St. Bernard Parish

1. 30 degrees 01 minutes 15.884 seconds N latitude  
89 degrees 21 minutes 19.511 seconds W longitude
2. 30 degrees 01 minutes 34.630 seconds N latitude  
89 degrees 20 minutes 58.811 seconds W longitude
3. 30 degrees 01 minutes 11.418 seconds N latitude  
89 degrees 21 minutes 12.304 seconds W longitude
4. 30 degrees 01 minutes 29.772 seconds N latitude  
89 degrees 20 minutes 52.475 seconds W longitude

The oyster season in the Hackberry Bay Public Oyster Seed Reservation as described in R.S. 56:434.E shall open at one-half hour before sunrise on November 15, 2010 and shall close at one-half hour after sunset on November 21, 2010, except for the 2008 cultch plant within the following coordinates which shall open at one-half hour before sunrise on November 15, 2010 and shall close at one-half hour after sunset on November 16, 2010:

#### 2008 Cultch Plant in Hackberry Bay- Jefferson/Lafourche Parish

1. 29 degrees 25 minutes 28.80 seconds N latitude  
90 degrees 01 minutes 17.11 seconds W longitude
2. 29 degrees 25 minutes 37.79 seconds N latitude  
90 degrees 00 minutes 55.39 seconds W longitude
3. 29 degrees 25 minutes 28.61 seconds N latitude  
90 degrees 00 minutes 50.44 seconds W longitude
4. 29 degrees 25 minutes 19.63 seconds N latitude  
90 degrees 01 minutes 12.17 seconds W longitude

The Little Lake Public Oyster Seed Grounds as described in LAC 76:VII.521 shall open one-half hour before sunrise on November 15, 2010 and shall close one half-hour after sunset on April 1, 2011.

The Lake Chien and Lake Felicity Public Oyster Seed Grounds as described in LAC 76:VII.517 shall open one-half hour before sunrise on November 15, 2010 and shall close at one-half hour after sunset on November 16, 2010, except for the 2009 cultch plant in Lake Chien within the following coordinates, which shall remain closed:

2009 Cultch Plant in Lake Chien—Terrebonne Parish

1. 29 degrees 20 minutes 07.167 seconds N latitude  
90 degrees 26 minutes 07.493 seconds W longitude
2. 29 degrees 19 minutes 59.855 seconds N latitude  
90 degrees 26 minutes 08.985 seconds W longitude
3. 29 degrees 20 minutes 03.161 seconds N latitude  
90 degrees 26 minutes 23.849 seconds W longitude
4. 29 degrees 20 minutes 09.837 seconds N latitude  
90 degrees 26 minutes 22.538 seconds W longitude.

The Lake Mechant Public Oyster Seed Grounds as described in LAC 76:VII.517 shall open one-half hour before sunrise on October 29, 2010 and shall close at one-half hour after sunset October 31, 2010.

The oyster season in the Bay Junop Public Oyster Seed Reservation as described in R.S. 56:434.E shall open one-half hour before sunrise on November 15, 2010 and shall close one-half hour after sunset on November 21, 2010,

The Vermilion/East and West Cote Blanche/Atchafalaya Bay Public Oyster Seed Grounds, as described in LAC 76:VII.507 and LAC 76:VII.509, shall open one-half hour before sunrise on November 15, 2010 and shall close one half-hour after sunset on April 1, 2011.

The oyster season in the west cove portion of the Calcasieu Lake public oyster area (Department of Health and Hospitals harvest area 30), as described in R.S. 56:435.1.1, shall open one-half hour before sunrise on October 15, 2010 and shall close one half-hour after sunset on November 14, 2010. The sack limit during this time period is set at 20 sacks per vessel per day as provided for in R.S. 56:435.1.1. During this time, the east side of the Calcasieu Lake public oyster area (Department of Health and Hospitals harvest area 29) shall remain closed.

The oyster season in the Calcasieu Lake Public Oyster Area (Department of Health and Hospitals harvest areas 29 and 30), as described in R.S. 56:435.1.1, shall then reopen at one-half hour before sunrise on November 15, 2010 and shall close at one-half hour after sunset on April 30, 2011, except for the 2009 cultch plant within the following coordinates which shall remain closed:

2009 Cultch Plant in Calcasieu Lake—Cameron Parish

1. 29 degrees 50 minutes 36.930 seconds N latitude  
93 degrees 19 minutes 14.977 seconds W longitude
2. 29 degrees 50 minutes 33.787 seconds N latitude  
93 degrees 19 minutes 14.102 seconds W longitude
3. 29 degrees 50 minutes 34.266 seconds N latitude  
93 degrees 19 minutes 12.365 seconds W longitude
4. 29 degrees 50 minutes 31.840 seconds N latitude  
93 degrees 19 minutes 11.817 seconds W longitude
5. 29 degrees 50 minutes 32.893 seconds N latitude  
93 degrees 19 minutes 06.405 seconds W longitude
6. 29 degrees 50 minutes 34.263 seconds N latitude  
93 degrees 19 minutes 01.273 seconds W longitude
7. 29 degrees 50 minutes 39.274 seconds N latitude  
93 degrees 19 minutes 02.220 seconds W longitude
8. 29 degrees 50 minutes 39.047 seconds N latitude  
93 degrees 19 minutes 07.548 seconds W longitude

The sack limit for Calcasieu Lake during this time period is set at 10 sacks per vessel per day as provided for in R.S. 56:435.1.1. However, these conservation actions shall not supersede public health closures.

The following areas will remain closed for the entire 2010/2011 oyster season:

The Bay Gardene Public Oyster Seed Reservation (as described in R.S. 56:434.E);

The 2009 cultch plants as described above in Three-Mile Bay, Black Bay, Lake Chien, Sister Lake, and Calcasieu Lake;

Barataria Bay Public Oyster Seed Grounds (as described in LAC 76:VII.517);

Deep Lake Public Oyster Seed Grounds (as described in LAC 76:VII.517);

Lake Tambour Public Oyster Seed Grounds (as described in LAC 76:VII.517);

Sister Lake Public Oyster Seed Reservation (as described in R.S. 56:434.E); and

Sabine Lake Public Oyster Area (as described in R.S. 56:435.1).

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Stephen J. Oats  
Chairman

1008#038

## DECLARATION OF EMERGENCY

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

#### Recreational and Commercial Fisheries Closure

In accordance with the emergency provisions of R.S. 49:953.B and R.S.49:967.D of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes all commercial fishing, effective immediately July 14, 2010, in the following area:

That portion of state outside waters seaward of the inside/outside shrimp line from the Mississippi/Louisiana state line westward to the eastern shore of Oyster Bayou at 91 degrees 07 minutes 48 seconds west longitude, and that portion of saltwater areas of the state east of the Mississippi River north of the southern shore of the Mississippi River Gulf Outlet and the southern shore of Lake Pontchartrain

from the double rig line as described in R.S. 56:495.1 westward to 89 degrees 51 minutes 35 seconds west longitude and the US Hwy 11 bridge in Lake Pontchartrain, and that portion of state inside waters east of the Mississippi River south of the southern shore of the Mississippi River Gulf Outlet and north of 29 degrees 38 minutes 12 seconds north latitude from the double rig line as described in R.S. 56:495.1 westward to 89 degrees 42 minutes 32 seconds west longitude near the western shore of the twin pipeline canals, and that portion of state inside waters from 89 degrees 28 minutes 06 seconds west longitude near Sable island eastward to the eastern shore of South Pass of the Mississippi River, and that portion of Breton and Chandeleur Sound as described by the double rig line in R.S.56:495.1, and that portion of state inside waters west of the eastern shore of South Pass of the Mississippi River westward to the southern shoreline of Red Pass at 89 degrees 28 minutes 13.4 seconds west longitude, and that portion of state inside waters south of 29 degrees 30 minutes 00 seconds north latitude from the western shoreline of Grand Bayou westward to 89 degrees 52 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 35 minutes 00 seconds north latitude from 89 degrees 52 minutes 00 seconds west longitude westward to the eastern shoreline of the Barataria Waterway, and that portion of state inside waters south of 29 degrees 18 minutes 30 seconds north latitude from the eastern shoreline of the Barataria Waterway westward to 90 degrees 00 minutes 00 seconds west longitude, and that portion of state inside waters south of 29 degrees 16 minutes 00 seconds north latitude from 90 degrees 00 minutes 00 seconds west longitude westward to the eastern shore of Bayou Lafourche, and that portion of state inside waters south of 29 degrees 12 minutes 50 seconds north latitude from the eastern shore of Bayou Lafourche westward to 90 degrees 17 minutes 50 seconds west longitude, and that portion of state inside waters south of 29 degrees 21 minutes 42 seconds north latitude from the western shore of Grand Bayou Blue and 90 degrees 17 minutes 50 seconds west longitude westward to the eastern shore of Bayou Terrebonne, and that portion of state inside waters south of 29 degrees 21 minutes 00 seconds north latitude from the eastern shore of Bayou Terrebonne westward to the western shore of Bayou Petit Caillou, and that portion of state inside waters south of 29 degrees 13 minutes 12 seconds from the western shore of Bayou Petit Caillou and the Houma Navigation Canal red buoy line westward to 91 degrees 07 minutes 48 seconds west longitude.

Effective with the closure, no person shall take or possess or attempt to take any species of fish for commercial purposes from waters within the closed area. The possession, sale, barter, trade, or exchange of any fish or other aquatic life from the closed area during the closure is prohibited, except as provided herein. Recreational fishing shall be allowed in accordance with the provisions contained herein.

Recreational fishing is being allowed within portions of the above described area, subject to continual testing and monitoring, as this activity is not regulated by the Food and Drug Administration, and the Environmental Protection Agency's nearshore water tests to date have shown no chemical contamination. This opening shall include licensed charter boat guides, and shall authorize harvest of bait by

wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329. Although recreational fishing will be allowed in portions of the closed areas described in this declaration, certain delineated areas, including heavily oiled areas, areas associated with containment and absorbent boom and areas of active cleanup shall remain closed to recreational fishing. Such delineated areas shall be identified on the department's website. In those areas open to recreational fishing, the commission and the secretary advise as follows: That recreational fishermen use an abundance of caution when considering to fish in areas closed to commercial fishing, as oil may be present in those areas, which could present a risk of immediate skin contact or inhalation of air borne hydrocarbons. Avoid areas where oil is observed, respect oil cleanup and removal activities and stay clear of areas being protected by boom material. Smell and examine catch closely to ensure that there are no obvious oil or chemical residues. Recreational fishermen fishing in areas closed to commercial fishermen do so at their own risk.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of Louisiana's coastal waters. Efforts have been made and are continuing to minimize the potential threats to fish and other aquatic life.

This action is taken in coordination with Louisiana Department of Health and Hospitals. Governor Jindal in a Declaration of Emergency issued on April 29, 2010 stated in part that "a declaration that a state of emergency exists is appropriate due to the predicted impact of oil along the Louisiana coast leaking from the Deepwater Horizon which threatens the state's natural resources, including land, water, fish, wildlife, fowl and other birds, and likewise threatens the livelihoods of Louisiana's citizens living along the coast which increases the economic impact of this incident".

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Stephen J. Oats  
Chairman

1008#001

## **DECLARATION OF EMERGENCY**

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

#### **Recreational Fisheries Opening**

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:6.1 which provides the Secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found

or existing in the waters of the state, and a declaration of emergency adopted by the Wildlife and Fisheries Commission on July 14, 2010 which grants authority to the secretary to broaden or to reopen the area closed to fishing if biological and technical data indicate the need to do so, the secretary hereby opens to all recreational fishing that portion of state inside waters south of the northern shore of Pass a Loutre and the Mississippi River Channel at 29 degrees 09 minutes 00 seconds north latitude westward to the western shoreline of Southwest Pass of the Mississippi River, and that portion of state outside waters south of 29 degrees 12 minutes 40 seconds north latitude westward to 89 degrees 25 minutes 00 seconds west longitude effective 6:00 p.m., July 29, 2010.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and are continuing to be made to minimize the potential threats to fish and other aquatic life. The secretary has determined that this portion of state inside and outside waters shall open to recreational fishing effective 6:00 p.m., July 29, 2010.

Robert J. Barham  
Secretary

1008#035

# Rules

## RULE

### Department of Children and Family Services Economic Stability and Self Sufficiency Section

#### Child Care Assistance Program Discontinuation of Job Search (LAC 67:III.5103)

Editor's Note: Section 5103 of Part III is being repromulgated to correct a citation error. The original Rule may be viewed in the June 20, 2010 *Louisiana Register* on pages 1277-1279.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, (DSS) Office of Family Support (OFS), amended LAC 67:III.5102, 5103, 5104, and 5109.

Section 5102 has been amended to expand the definition of a *Household Designee* to include that this person may be responsible for checking a child or children on or off of an approved child care vehicle.

Section 5103 has been amended to remove the reference to the specific verification required for determining eligibility.

Sections 5103, 5104, and 5109 have been amended to discontinue Job Search as a countable Employment and Training (E and T) activity in CCAP. Due to budget constraints, this will align with the department's requirement to ensure core services are provided to assist needy families during difficult economic times. This Rule should result in a reduction of CCAP cases and will allow the department to address the child care needs of participants who are currently employed or in an approved job training or educational activity.

This Rule was effective by Emergency Rule effective January 1, 2010.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Family Support

#### Subpart 12. Child Care Assistance

#### Chapter 51. Child Care Assistance Program

#### Subchapter A. Administration, Conditions of Eligibility, and Funding

#### §5103. Conditions of Eligibility

A. - B.3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed for a minimum average of 25 hours per week and all countable employment hours must be paid at least at the Federal minimum hourly wage; or

b. attending a job training or educational program for a minimum average of, effective April 1, 2003, 25 hours per week (attendance at a job training or educational

program must be verified, including the expected date of completion); or

c. engaged in some combination of employment which is paid at least at the Federal minimum hourly wage, or job training, or education as defined in Subparagraph B.4.b of this Section that averages, effective April 1, 2003, at least 25 hours per week.

d. Exception: a household in which all of the members described in Paragraph B.4 of this Section meet the disability criteria is not eligible for child care assistance unless one of those members meets, effective April 1, 2003, the required minimum average of 25 activity hours per week.

5. - 6. ...

7. Effective November 1, 2005, the household must be current on payment of co-payments to any current or previous provider(s). Verification will be required that co-payments are not owed when:

a. a change in provider is reported;

b. at application for child care assistance, the most recent case rejection or closure was due to owing co-payments or not making necessary co-payments;

c. a child care provider reports that the client owes co-payments or is not making necessary co-payments.

C. The family requesting child care services must provide the information and verification necessary for determining eligibility and benefit amount, and meet appropriate eligibility requirements established by the State.

D. Cases eligible for payment may be assigned a certification period of up to twelve months.

E. Effective October 1, 2004, all children receiving services must be age-appropriately immunized according to the schedule of immunizations as promulgated by the Louisiana Office of Public Health, or be in the process of receiving all age-appropriate immunizations. No person is required to comply with this provision if that person or his/her parent or guardian submits a written statement from a physician stating that the immunization procedure is contraindicated for medical reasons, or if the person or his/her parent or guardian objects to the procedure on religious grounds.

F. CCAP households must participate in the system designated by the agency for capturing time and attendance. This process may include finger imaging for the Head of Household and their Household Designees. The agency will determine the maximum number of Household Designees allowed on a CCAP case. Finger imaging is a requirement to participate in CCAP if the provider chosen by the client utilizes this as the mechanism for capturing time and attendance. Exceptions may be granted by the Executive Director of Family Assistance or his or her designee on a case by case basis.

G. If a client chooses care in an in-home provider setting, the client must possess a working landline telephone.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:1278 (June 2010), repromulgated LR 36:1767 (August 2010).

Kristy H. Nichols  
Secretary

1006#083

## RULE

### Department of Economic Development Office of Business Development

Research and Development Tax Credits  
(LAC 13:I.2901, 2904, 2905, 2907 and 2509)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 47:6015, the Department of Economic Development hereby adopts the following Rules. The purpose of the Rule is to establish program policies and procedures in the administration of the Research and Development Tax Credit program.

#### Title 13

### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 29. Research and Development Tax Credit

##### §2901. Purpose and Application

A. The purpose of this Chapter is to implement the Research and Development Tax Credit Program as established by R.S. 47:6015.

B. This Chapter shall be administered to achieve the following purposes:

1. encourage the development, growth, and expansion of the private sector within the state; and
2. encourage new and continuing efforts to conduct research and development activities within this state.

C. This Chapter shall apply to any person claiming a credit under this program.

D. The amended version of this Chapter as published in the August, 2010 edition of the *Louisiana Register* shall be effective:

1. to fiscal years of taxpayer beginning in 2009; or
2. for fiscal years beginning prior to 2009, to expenditures incurred after July 9, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010).

##### §2904. Type, Amount and Duration of Credit

A. Type. Any taxpayer meeting the following criteria shall be allowed a refundable tax credit to be applied against income and corporation franchise taxes due:

1. employs more than 50 Louisiana residents, and claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities;

2. employs up to 50 Louisiana residents, and incurs qualified research expenses for the taxable year, as defined in 26 U.S.C. §41(b); and

3. receives a Small Business Innovation Research Grant, as defined in R.S. 47:6015 (D).

B. Amount. The amount of the credit authorized shall be equal to:

1. 8 percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities, if the applicant is an entity that employs 100 or more Louisiana residents; or

2. 20 percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities, if the applicant is an entity that employs 50 to 99 Louisiana residents; or

3. 25 percent of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit under 26 U.S.C. §41; or

4. 40 percent of the state's apportioned share of the taxpayer's qualified research expenses conducted in the state if the applicant is an entity that employs fewer than 50 Louisiana residents, or

5. 40 percent of the Small Business Innovation Research Grant award received during the tax year.

C. Duration. No credit shall be allowed for research expenditures incurred or Small Business Innovation Research Grant funds received after December 31, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 36:1768 (August 2010).

##### §2905. Certification of Amount of Credit

A. ...

B. The application for a credit certification shall be submitted on a form provided by the DED and shall include, but not be limited to the following information.

1. An application fee of \$250, payable to Louisiana Department of Economic Development:

2. appropriate supporting documentation:
  - a. for taxpayers employing more than 50 residents, a federal income tax return and evidence of the amount of federal research credit for the same taxable year;
  - b. for taxpayers employing up to 50 residents, evidence of the amount of qualified research expenses for the same taxable year;
  - c. for taxpayers claiming credits based upon the federal Small Business Innovation Research Grant, evidence of the amount of such grant;

3. the total amount of qualified research expenses and the qualified research expenses in this state;
4. the total number of Louisiana residents employed by the taxpayer and the number of those Louisiana residents directly engaged in research and development;

5. the average wages of the Louisiana resident employees not directly engaged in research and development and the average wages of the Louisiana resident employees directly engaged in research and development;
6. the average value of benefits received by all Louisiana resident employees;

7. the cost of health insurance coverage offered to all Louisiana resident employees;

8. any other information required by the Department of Economic Development.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010).

**§2907. Sale of Research and Development Tax Credits**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), repealed by the Office of Business Development, LR 36:1769 (August 2010).

**§2909. Application Fee**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004), repealed by the Office of Business Development, LR 36:1769 (August 2010).

Kristy Mc Kearn  
Undersecretary

1008#078

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.613, 1101, 1601, 4311, 5101, and 5103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 111—The Louisiana School, District, and State Accountability System*: §613, Calculating a Graduation Index, §1101, Performance Labels, §1601, Entry into and Exit from Academically Unacceptable School Status, §4311, Performance Labels, §5101, Definition of a Distinguished Educator, and §5103, Role of a Distinguished Educator. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations. The changes in Chapter 6 provide detail of how the Graduation Index is calculated. The changes in Chapters 11, 16, and 43 provide detail of school and district performance scores and labels and explain how schools will enter and exit from Academically Unacceptable School status.

**Title 28  
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System  
Chapter 6. Graduation Index  
§613. Calculating a Graduation Index**

A. ...

B. The graduation index of a school shall be the average number of points earned by cohort members.

1. Beginning with the 2011 Baseline SPS, the baseline graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the current subgroup component (see §708).

2. Beginning with the 2012 Growth SPS, the growth graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the prior year's subgroup component (see §708).

3. The cohort graduation rate adjustment factor shall be calculated using the formula: unadjusted graduation index + [(graduation rate – graduation rate target) \* 1.5].

4. The graduation rate target shall be 65 percent in 2011 and increase 5 percent per year until 2014 when it will reflect the goal of 80 percent established in R.S. 17:2928.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:000 (April 2010), LR 36:1769 (August 2010).

**Chapter 11. Performance Labels**

**§1101. Performance Labels**

A. School Performance Score

Performance Label	School Performance Score
Academically Unacceptable	Below 60.0 (through 2010) Below 65.0 (in 2011) Below 75.0 (in 2012)
Academic Watch	60 - 74.9 (in 2010) 65.0 - 74.9 (in 2011)
★	60.0 – 79.9 (through 2009) 75 – 79.9(beginning in 2010)
★★	80.0 – 99.9
★★★	100.0 – 119.9
★★★★	120.0 – 139.9
★★★★★	140.0 and above

B. ...

C. In the fall 2010, 2011, and 2012 accountability releases, any school that is not AUS and has an SPS of less than 75.0 shall be labeled "Academic Watch".

D. Academic watch schools that meet additional criteria associated with specific grant programs (such as Race to the Top and federal school improvement grants) can:

1. be eligible for participation in those programs; and
2. are waived from the requirements of academic assistance when they do participate.



AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 31:2764 (November 2005), LR 33:2349 (November 2007), LR 35:639 (April 2009), LR 36:000 (April 2010), LR 36:1769 (August 2010).

**Chapter 16. Academically Unacceptable Schools and Subgroup Component Failure**

**§1601. Entry into and Exit from Academically Unacceptable School Status**

A. Through the 2009-10 accountability releases, schools with baseline school performance scores (SPS) of less than 60.0 points shall be labeled "Academically Unacceptable Schools" (AUS). Beginning with the 2010-11 accountability release, schools with SPS of less than 65.0 shall be labeled "AUS". This value shall increase annually by 10.0 SPS points to 75.0 in 2012. All AUS schools shall implement remedies from the "Academically Unacceptable Schools" table (below).

A.1. - E. ...

F. Schools exit academically unacceptable school status when their Baseline SPSs are greater than or equal to:

1. 60.0 in 2009-10;
2. 64.9 in 2010-11; and
3. 75.0 in 2011-2012.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2595 (December 2007), amended LR 35:2312 (November 2009), LR 36:000 (April 2010), LR 36:1770 (August 2010).

**Chapter 43. District Accountability**

**§4311. Performance Labels**

A. Districts shall be assigned a DPS performance label as follows.

1. A district shall receive a label for its district performance score.

Performance Label	District Performance Score
Academically Unacceptable	Below 60.0 (through 2010) Below 65.0 (in 2011) Below 75.0 (in 2012)
Academic Watch	60 - 74.9 (in 2010) 65 - 74.9 (in 2011)
★	60.0 - 79.9 (through 2009) 75.0 - 79.9 (beginning in 2010)
★★	80.0 - 99.9
★★★	100.0 - 119.9
★★★★	120.0 - 139.9
★★★★★	140.0 and above

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:635 (March 2005), LR 33:635 (April 2007), LR 35:640 (April 2009), LR 36:000 (April 2010), LR 36:1770 (August 2010).

**Chapter 51. Distinguished Educator Program**  
**§5101. Definition of a Distinguished Educator**

A. The Distinguished Educator Program is part of the school and district accountability program established pursuant to R.S. 17:10.1.

1. Distinguished educators shall provide technical assistance in low performing schools determined to be in need of corrective action or otherwise in need of technical assistance pursuant to the school and district accountability program.

2. Distinguished educators will be provided to low performing schools by the LDOE, as available.

3. Placement of a distinguished educator in a school is determined by:

- a. SPS of the school;
- b. number of years the school has been underperforming;
- c. geographic equity of distribution of distinguished educators;
- d. LEA agreement to enter into the distinguished educator memorandum of understanding with the LDOE.

4. Distinguished educators may be provided to a school for which BESE has entered into a memorandum of understanding (MOU) with a school district.

5. The LDOE will enter into memorandum of understanding (as required by R.S. 17:10.1) with the LEA for the services of a distinguished educator.

6. The distinguished educator will have access to student, school, and district records as is necessary to facilitate the school improvement process at the assigned school.

7. Distinguished educators are hired as temporary unclassified employees of the Department of Education for the term of service. The terms, conditions, benefits, compensation, and all other employment issues regarding the distinguished educator are to be determined by the Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:000 (April 2010), LR 36:1770 (August 2010).

**§5103. Role of the Distinguished Educator**

A. The distinguished educator will communicate regularly, both verbally and in writing with both the school principal and the district superintendent or designee (liaison) to facilitate the school improvement process at the assigned school.

B. To facilitate school improvement, the distinguished educator shall:

1. model effective instructional and leadership strategies;
2. analyze school data with staff and help the staff utilize the data for school improvement planning and program implementation;
3. deliver professional development to school staff;
4. promote and support professional learning communities among the school staff;
5. monitor, assess and assist teaching and learning in the classroom;

6. mentor and coach individual teachers over a significant period of time to improve academic outcomes with students;

7. facilitate the implementation of a school curriculum that aligns with the grade level expectations (GLEs) and Louisiana comprehensive curriculum;

8. assist school staff in improving student achievement as measured by formative and summative assessments;

9. assist the principal and central office to examine how school funds are expended and make suggestions on how to better utilize these funds to align with the SIP and focus on student achievement;

10. make recommendations to the local superintendent and school board on behalf of the school;

11. promote improved communications and involvement among and between students, staff, parents, and the community;

12. participate in school improvement activities and parent/community involvement meetings at an assigned school;

13. submit a written monthly report of school improvement implementation or non-implementation, and recommendations to the Department of Education and the district superintendent or designee (liaison). The distinguished educator monthly reports are available for BESE review for all schools or for any specific school, on request;

14. serves in an advisory capacity to the school principal and staff as well as the district staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:000 (April 2010), LR 36:1770 (August 2010).

Jeanette B. Vosburg  
Executive Director

1008#053

## RULE

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

Miscellaneous Amendments for NRC Compatibility  
(LAC 33:XV.102, 328, 713, and 763)(RP051ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.102, 328, 713, and 763 (Log #RP051ft).

This Rule is identical to federal regulations found in 10 CFR 32 and 35, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

The changes in the state regulations are Category B and C (must do) requirements for the state of Louisiana to remain

an NRC agreement state. The basis and rationale for this Rule are to be compatible with federal regulations and maintain an adequate Agreement State program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part XV. Radiation Protection

##### Chapter 1. General Provisions

##### §102. Definitions and Abbreviations

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that chapter.

\* \* \*

*Authorized Nuclear Pharmacist*—a pharmacist who:

1. is board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

2. is identified as an authorized nuclear pharmacist on a department, licensing state, Nuclear Regulatory Commission, or agreement state license that authorizes the use of radioactive material in the practice of nuclear pharmacy; or

3. is identified as an authorized nuclear pharmacist on a permit issued by the department, licensing state, Nuclear Regulatory Commission, or agreement state specific licensee of broad scope authorized to permit the use of radioactive material in the practice of nuclear pharmacy; or

4. meets the requirements specified in LAC 33:XV.763.K and M.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008), LR 36:1771 (August 2010).

##### Chapter 3. Licensing of Radioactive Material

##### Subchapter D. Specific Licenses

##### §328. Special Requirements for Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material

A. - J.2.b.i. ...

ii. this individual meets the requirements specified in LAC 33:XV.763.K.2 and M and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

J.2.b.iii. - K.2. ...

L. Licensing the Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use

1. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Chapter 7 for use as a calibration, transmission, or reference source or for the uses listed in LAC 33:XV.739, 741, and 747 of these regulations will be approved if the following conditions are met.

L.1.a. - M.4.g. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 26:2768 (December 2000), LR 27:1228 (August 2001), LR 30:1664 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2526 (October 2005), LR 33:2179 (October 2007), LR 36:1771 (August 2010).

## Chapter 7. Use of Radionuclides in the Healing Arts

### §713. Suppliers

A. A licensee shall use for medical use only:

1. ...

2. reagent kits that have been manufactured, labeled, packaged, and distributed in accordance with an approval issued by the U.S. Food and Drug Administration;

3. sealed sources or devices non-commercially transferred from a Nuclear Regulatory Commission Medical Licensee, a licensing state medical use licensee, or an agreement state medical use licensee; and

4. teletherapy sources manufactured and distributed in accordance with a license issued pursuant to these regulations or the equivalent regulations of another agreement state, a licensing state, or the U.S. Nuclear Regulatory Commission.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2103 (November 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1772 (August 2010).

### §763. Training

A. - E.4.d.iii. ...

F. Training for Use of Manual Brachytherapy Sources. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of a manual brachytherapy source for the uses authorized in LAC 33:XV.741 to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph F.2.c of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

F.1.a. - 2.a.ii.(f). ...

b. has completed three years of supervised clinical experience in radiation oncology under the supervision of an

authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in Subparagraph F.2.a.ii of this Section; and

c. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in Subparagraph F.1.a, or Paragraph F.2.a and b of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in LAC 33:XV.741.

G. - I.2.a.ii.(f). ...

b. has completed three years of supervised clinical experience in radiation therapy under the supervision of an authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in Subparagraph I.2.a.ii of this Section; and

c. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph I.1.a or Subparagraph I.2.a and b and Paragraph I.3 of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Subsection or equivalent agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

I.3. - M. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006), LR 34:983 (June 2008), LR 34:2121 (October 2008), LR 36:1772 (August 2010).

Herman Robinson, CPM  
Executive Counsel

1008#063

## RULE

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

Organic Solvents and Solvent Degreasers  
(LAC 33:III.111 and 2123)(AQ307)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.111 and 2123 (Log #AQ307).

The Rule will update and add new emission limitation and control technique efficiency requirements for organic solvent and solvent degreaser volatile organic compound (VOC) emissions. It will also add definitions to the general provisions to clarify letterpress and lithographic printing process terms. This action is required by the Clean Air Act (CAA) which provides that state implementation plans (SIPs) for ozone nonattainment areas include "reasonably available control measures" (RACM), including "reasonably available control technology" (RACT), for sources of emissions. The CAA provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of volatile organic compound (VOC) emissions covered by a control technique guidelines (CTG) document issued after November 15, 1990, and prior to the area's date of attainment. Since EPA has issued new control technique guidelines, the state regulations need to be revised to reflect EPA's new guidelines. The basis and rationale for this Rule are to mirror the control technique guidelines issued by the EPA. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### Title 33 ENVIRONMENTAL QUALITY Part III. Air

#### Chapter 1. General Provisions

##### §111. Definitions

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

\*\*\*

*Coldset Printing*—a web offset printing process in which ink is allowed to dry naturally through absorption and evaporation.

\*\*\*

*Flexible Package Printing Facility*—a facility that uses either rotogravure printing or flexographic printing processes on flexible packaging.

*Flexible Packaging*—any package or part of a package the shape of which can be readily changed, including, but not limited to, bags, pouches, liners, and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

\*\*\*

*Fountain Solution*—a solution used on an offset lithographic press to keep the ink from adhering to the non-image areas of the offset lithographic plate.

\*\*\*

*Heatset Dryer*—a hot air dryer used in heatset lithography to heat the printed substrate and to promote the evaporation of the ink oils.

*Heatset Web Offset Lithographic Printing*—a type of web offset lithographic printing process where heat is applied via a drying oven to set and dry the ink.

\*\*\*

*Letterpress Printing*—relief printing of text and/or images using a press with a "type-high bed," in which a reversed, raised surface is inked and then pressed into a sheet of paper to obtain a positive, right-reading image.

\*\*\*

*Miscellaneous Metal Parts and Products Coating*—the coating of miscellaneous metal parts and products in the following categories:

a. - e. ...  
f. fabricated metal products (metal-covered doors, frames, etc.);  
g. any other category of coated metal products except:

i. those on the specified list in LAC 33:III.2123.C. Table 1, Items 1-6, and 13-17 of surface coating processes, which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries);

ii. coating operations covered under 40 CFR 63, Subpart GG – National Emissions Standards for Aerospace Manufacturing and Rework Facilities; and

iii. the surface coating of metal parts and products performed on-site at installations owned or operated by the armed forces of the United States (including the Coast Guard, and the National Guard of any state) or the National Aeronautics and Space Administration, or the surface coating of military munitions manufactured by or for the armed forces of the United States.

\*\*\*

*Offset Lithographic Printing*—an indirect printing method in which ink is transferred from the lithographic plate to a rubber-covered intermediate "blanket" cylinder, and then from the blanket cylinder to the paper or other printing substrate.

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*Sheet-Fed Printing*—a process in which individual sheets of paper or other substrates are fed into the press.

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*Web Printing*—a process where a continuous roll of paper or other substrate is fed into the press, and rewound or cut to size after printing.

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

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

Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:70 (January 2008), LR 35:1101 (June 2009), LR 36:1773 (August 2010).

**Chapter 21. Control of Emission of Organic Compounds  
Subchapter B. Surface Coatings**

**§2123. Organic Solvents**

A. Except as provided in Subsections B and C of this Section, any emissions of volatile organic compounds resulting from the application of surface coatings of more than 15 pounds (6.8 kilograms) per day, or an equivalent level of 2.7 tons per 12-month rolling period, shall control emissions of volatile organic compounds through the use of low solvent coatings, as provided in Subsection C of this Section, or, where feasible, by incorporating one or more of the following control methods:

A.1. - B.2. ...

C. Surface Coating Industries. No person may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating of any materials affected by this Subsection to exceed the emission limits as specified in this Section.

6. Surface Coating of Metal Furniture		
General, One Component (Baked/Air Dried)	2.3 / 2.3	0.275 / 0.275
General, Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.275 / 0.340
Extreme High Gloss (Baked/Air Dried)	3.0 / 2.8	0.360 / 0.340
Extreme Performance	3.0	0.360
Heat Resistant	3.0	0.360
Metallic	3.0	0.360
Pretreatment Coatings	3.0	0.360
Solar Absorbent	3.0	0.360

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
<b>1. Large Appliance Coating Industry</b>		
General, One Component	2.3	0.275
General, Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.275 / 0.340
Extreme High Gloss	2.8	0.340
Extreme Performance	2.8	0.340
Heat Resistant	2.8	0.340
Metallic	2.8	0.340
Pretreatment Coatings	2.8	0.340
Solar Absorbent	2.8	0.340
<b>2. Surface Coating of Cans</b>		
Sheet Basecoat (Exterior and Interior) and Over-Varnish: Two-Piece Can Exterior (Basecoat and Over-Varnish)	2.8	0.34
Two and Three-Piece Can Interior Body Spray, Two-Piece Can Exterior End (Spray or Roll Coat)	4.2	0.51
Three-Piece Can Side-Seam Spray	5.5	0.66
End Sealing Compound	3.7	0.44
<b>3. Surface Coating of Coils</b>		
Prime and Topcoat or Single Coat Operation	2.6	0.31
<b>4. Surface Coating of Fabrics</b>		
Fabric Facility	2.9	0.35
Vinyl Coating Line (Except Plastic Coatings)	3.8	0.45
<b>5. Surface Coating—Magnet Wire Coating</b>		
Coating Line	1.7	0.20

Table 1. Surface Coating Industries				
Affected Facility	Daily Weighted Average VOC Emission Limitation			
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Lbs. per Gal. of Solids	Kgs. per Liter of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Solids
<b>7. Surface Coating of Miscellaneous Metal Parts and Products</b>				
General, One Component or Multi-Component (Baked/Air Dried)	2.3 / 2.8	3.35 / 4.52	0.28 / 0.34	0.40 / 0.54
Camouflage	3.5	6.67	0.42	0.80
Electric Insulating Varnish	3.5	6.67	0.42	0.80
Etching Filler	3.5	6.67	0.42	0.80
Extreme High Gloss (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
Extreme Performance (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
Heat Resistant (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
High Performance Architectural	3.5	6.67	0.42	0.80
High Temperature	3.5	6.67	0.42	0.80
Metallic	3.5	6.67	0.42	0.80
Military Specification (Baked/Air Dried)	2.3 / 2.8	3.35 / 4.52	0.28 / 0.34	0.40 / 0.54
Mold Seal	3.5	6.67	0.42	0.80
Pan Baking	3.5	6.67	0.42	0.80
Prefabricated Architectural, One Component or Multi-Component (Baked/Air Dried)	2.3 / 3.5	3.35 / 6.67	0.28 / 0.42	0.40 / 0.80
Pretreatment Coatings	3.5	6.67	0.42	0.80

Table 1. Surface Coating Industries				
Affected Facility	Daily Weighted Average VOC Emission Limitation			
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Lbs. per Gal. of Solids	Kgs. per Liter of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Solids
Repair and Touch Up (Baked/Air Dried)	3.0 / 3.5	Does not apply	0.36 / 0.42	Does not apply
Silicone Release	3.5	6.67	0.42	0.80
Solar Absorbent (Baked/Air Dried)	3.0 / 3.5	5.06 / 6.67	0.36 / 0.42	0.61 / 0.80
Vacuum Metalizing	3.5	6.67	0.42	0.80
Drum Coating, New, Exterior	2.8	4.52	0.34	0.54
Drum Coating, New, Interior	3.5	6.67	0.42	0.80
Drum Coating, Reconditioned, Exterior	3.5	6.67	0.42	0.80
Drum Coating, Reconditioned, Interior	4.2	9.78	0.50	1.17
Powder Coating	0.4	Does not apply	0.05	Does not apply
<b>8. Surface Coating of Miscellaneous Plastic Parts and Products</b>				
General, One Component	2.3	3.35	0.28	0.40
General, Multi-Component	3.5	6.67	0.42	0.80
Electric Dissipating Coatings and Shock-Free Coatings	6.7	74.7	0.80	8.96
Extreme Performance	3.5 (2-pack coatings)	6.67 (2-pack coatings)	0.42 (2-pack coatings)	0.80 (2-pack coatings)
Metallic	3.5	6.67	0.42	0.80
Military Specification	2.8 (1 pack) 3.5 (2 pack)	4.52 (1 pack) 6.67 (2 pack)	0.34 (1pack) 0.42 (2pack)	0.54 (1pack) 0.80 (2pack)
Mold Seal	6.3	43.7	0.76	5.24
Multi-Colored Coatings	5.7	25.3	0.68	3.04
Optical Coatings	6.7	74.7	0.80	8.96
Vacuum Metalizing	6.7	74.7	0.80	8.96
<b>9. Surface Coating of Automotive/Transportation Plastic Parts</b>				
<b>a. High Bake Coatings—Interior and Exterior Parts</b>				
Flexible Primer	4.5	11.58	0.54	1.39
Non-Flexible Primer	3.5	6.67	0.42	0.80
Base Coat	4.3	10.34	0.52	1.24
Clear Coat	4.0	8.76	0.48	1.05
Non-Base Coat/Clear Coat	4.3	10.34	0.52	1.24
<b>b. Low Bake/Air Dried Coatings—Exterior Parts</b>				
Primer	4.8	13.80	0.58	1.66
Base Coat	5.0	15.59	0.60	1.87
Clear Coat	4.5	11.58	0.54	1.39

Table 1. Surface Coating Industries				
Affected Facility	Daily Weighted Average VOC Emission Limitation			
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Lbs. per Gal. of Solids	Kgs. per Liter of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Solids
Non-Base Coat/Clear Coat	5.0	15.59	0.60	1.87
c. Low Bake/Air Dried Coatings—Interior Parts	5.0	15.59	0.60	1.87
d. Touch Up and Repair Coatings	5.2	17.72	0.62	2.13
For red, yellow, and black auto coatings, except touch up and repair coatings, the limit is determined by multiplying the appropriate limit in Item 9 of this Table by 1.15.				
<b>10. Surface Coating of Business Machine Plastic Parts</b>				
Primer	2.9	4.80	0.35	0.57
Topcoat	2.9	4.80	0.35	0.57
Texture Coat	2.9	4.80	0.35	0.57
Fog Coat	2.2	3.14	0.26	0.38
Touch Up and Repair	2.9	4.80	0.35	0.57
<b>11. Surface Coating of Pleasure Craft</b>				
Extreme High Gloss Topcoat	4.1	9.2	0.49	1.10
High Gloss Topcoat	3.5	6.7	0.42	0.80
Pretreatment Wash Primer	6.5	55.6	0.78	6.67
Finish Primer/Surfacer	3.5	6.7	0.42	0.80
High Build Primer Surfacer	2.8	4.6	0.34	0.55
Aluminum Substrate Antifoulant Coating	4.7	12.8	0.56	1.53
Other Substrate Antifoulant Coating	2.8	4.4	0.33	0.53
All Other Pleasure Craft Surface Coatings (for Metal or Plastic)	3.5	6.7	0.42	0.80

Table 1. Surface Coating Industries				
Affected Facility	Daily Weighted Average VOC Emission Limitation			
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)		Kgs. per Liter of Coating as applied (minus water and exempt solvent)	
<b>12. Surface Coating of Motor Vehicle Materials</b>				
Motor Vehicle Cavity Wax	5.4		0.65	
Motor Vehicle Sealer	5.4		0.65	
Motor Vehicle Deadener	5.4		0.65	
Motor Vehicle Gaskets/Gasket-Sealing Material	1.7		0.20	

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
Motor Vehicle Underbody Coating	5.4	0.65
Motor Vehicle Trunk Interior Coating	5.4	0.65
Motor Vehicle Bedliner	1.7	0.20
Motor Vehicle Lubricating Wax/Compound	5.8	0.70
The limits in Items 7-12 of this Table do not apply to operations covered in Items 1-6 or 13-17 herein, or to aerosol coatings, architectural coatings, or automobile refinish coatings.		
13. Factory Surface Coatings of Flat Wood Paneling with VOC Emissions Greater Than 15 Pounds Per Day Before Controls		
All Inks, Coatings, and Adhesives	2.1	0.25
14. Surface Coatings for Marine Vessels and Oilfield Tubulars and Ancillary Oilfield Equipment		
a. Except as otherwise provided in this Section, a person shall not apply a marine coating with a VOC content in excess of the following limits:		
Baked Coatings	3.5	0.42
Air-Dried, Single-Component Alkyd or Vinyl Flat or Semi-Gloss Finish Coatings	3.5	0.42
Two Component Coatings	3.5	0.42
b. Except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, in which the VOC limitations in Item 14.a of this Table may not be exceeded, specialty marine coatings and coatings on oilfield tubulars and ancillary oilfield equipment with a VOC content not in excess of the following limits may be applied:		
Heat Resistant	3.5	0.42
Metallic Heat Resistant	4.42	0.53
High Temperature (Fed. Spec. TT-P-28)	5.41	0.65
Pre-Treatment Wash Primer	6.5	0.78
Underwater Weapon	3.5	0.42
Elastomeric Adhesives With 15 Percent by Weight Natural or Synthetic Rubber	6.08	0.73
Solvent-Based Inorganic Zinc Primer	5.41	0.65
Pre-Construction and Interior Primer	3.5	0.42
Exterior Epoxy Primer	3.5	0.42
Navigational Aids	3.5	0.42
Sealant for Wire-Sprayed Aluminum	5.4	0.648
Special Marking	4.08	0.49
Tack Coat (Epoxies)	5.08	0.61
Low Activation Interior Coating	4.08	0.49

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
Repair and Maintenance Thermoplastic	5.41	0.65
Extreme High Gloss Coating	4.08	0.49
Antenna Coating	4.42	0.53
Antifoulant	3.66	0.44
High Gloss Alkyd	3.5	0.42
Anchor Chain Asphalt Varnish (Fed. Spec. TT-V-51)	5.2	0.62
Wood Spar Varnish (Fed. Spec. TT-V-119)	4.1	0.492
Dull Black Finish Coating (DOD-P-15146)	3.7	0.444
Tank Coating (DOD-P-23236)	3.5	0.42
Potable Water Tank Coating (DOD-P-23236)	3.7	0.444
Flight Deck Markings (DOD-C-24667)	4.2	0.504
Vinyl Acrylic Top Coat	5.4	0.648
Antifoulant Applied to Aluminum Hulls	4.5	0.55

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Kgs. VOC/Kgs. Solids (Lbs. VOC/Lbs. Solids)	Kgs. VOC/Kgs. Coating (Lbs. VOC/Lbs. Coating)
15. Surface Coating of Paper, Film, Foil, Pressure-Sensitive Tape, and Labels		
Paper, Film, and Foil	0.40	0.08
Pressure-Sensitive Tape and Labels	0.20	0.067

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Deposited Solids	Kgs. per Liter of Deposited Solids
16. Surface Coating of Assembly Line Automobiles and Light Duty Trucks		
Primer-Surfacer Operations (Including Application Area, Flashoff Area, and Oven)	12.0	1.44
Topcoat Operations (Including Application Area, Flashoff Area and Oven)	12.0	1.44
Final Repair Operations (Including Flashoff Area and Oven)	4.8	0.58
Combined Primer-Surfacer and Topcoat Operations	12.0	1.44

Electrodeposition Primer Operations (Including Application Area, Spray/Rinse Stations, and Curing Oven)	<b>When Solids Turnover Ratio is <math>R_T \geq 0.16</math></b>	<b>When <math>0.040 \leq R_T &lt; 0.160</math></b>	<b>When <math>R_T &lt; 0.040</math></b>
	0.084 kgs./liter (0.7 lbs./gal.) coating solids applied	$0.084 \times 350^{0.160-R_T}$ kgs./liter (0.084 x $350^{0.160-R_T} \times 8.34$ lbs./gal.) coating solids applied	No VOC emission limit

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
17. General and Specialty Adhesive Application Processes	<b>Lbs. VOC per Gal. of Adhesive or Adhesive Primer (minus water and exempt compounds)</b>	<b>Grams VOC per Liter of Adhesive or Adhesive Primer (minus water and exempt compounds)</b>
a. General Adhesive Application Process		
Reinforced Plastic Composite	1.7	200
Flexible Vinyl	2.1	250
Metal	0.3	30
Porous Material (Except Wood)	1.0	120
Rubber	2.1	250
Wood	0.3	30
Other Substrates	2.1	250
b. Specialty Adhesive Application Processes		
Ceramic Tile Installation	1.1	130
Contact Adhesive	2.1	250
Cove Base Installation	1.3	150
Floor Covering Installation (Indoor)	1.3	150
Floor Covering Installation (Outdoor)	2.1	250
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	5.5	660
Metal to Urethane/Rubber Molding or Casting	7.1	850
Motor Vehicle Adhesive	2.1	250
Motor Vehicle Weather Strip Adhesive	6.3	750
Multipurpose Construction	1.7	200
Plastic Solvent Welding (ABS)	3.3	400
Plastic Solvent Welding (Except ABS)	4.2	500
Sheet Rubber Lining Installation	7.1	850
Single-Ply-Roof Membrane Installation/Repair (Except EPDM)	2.1	250
Structural Glazing	0.8	100
Thin Metal Laminating	6.5	780
Tire Repair	0.8	100
Waterproof Resorcinol Glue Application	1.4	170
c. Adhesive Primer Application Processes		
Motor Vehicle Glass Bonding Primer	7.5	900
Plastic Solvent Welding Adhesive Primer	5.4	650

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
Single-Ply Roof Membrane Adhesive Primer	2.1	250
Other Adhesive Primer	2.1	250

Table 1. Surface Coating Industries		
18. Fiberglass Boat Manufacturing Materials		
For this material —	And this application method —	This weighted average monomer VOC content (weight percent) limit is —
Production resin	Atomized (spray)	28
Production resin	Nonatomized	35
Pigmented gel coat	Any method	33
Clear gel coat	Any method	48
Tooling resin	Atomized	30
Tooling resin	Nonatomized	39
Tooling gel coat	Any method	40

#### D. Control Techniques

1. If add-on controls such as incinerators or vapor recovery systems are used to comply with the emission limitation requirements, in terms of pounds per gallon of solids as applied (determined in accordance with Paragraph D.8 of this Section), the volatile organic compound capture and abatement system shall be at least 80 percent efficient overall (85 percent for industrial cleaning solvents, and miscellaneous industrial adhesive operations; and 90 percent for factory surface coating of flat wood paneling, surface coating of metal furniture, large appliance coating, surface coating of miscellaneous metal parts and products, surface coating of miscellaneous plastic parts and products, surface coating of automotive/transportation plastic parts, surface coating of business machine plastic parts, surface coating of pleasure craft, surface coating of paper, film, foil, pressure-sensitive tape, and labels, and surface coating of motor vehicle materials). All surface coating facilities shall submit to the Office of Environmental Services, for approval, design data for each capture system and emission control device that is proposed for use. The effectiveness of the capture system (i.e., capture efficiency) shall be determined using the procedure specified in Paragraph E.6 of this Section.

2. - 3. ...

4. Compliance with the emission limits established in Table 1.d, Item 16 of Subsection C of this Section shall be determined in accordance with EPA's "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations", EPA 453/R-08-002, September, 2008.

5. ...

6. Surface coating facilities on any property in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes that when controlled have a potential to emit, at maximum production, a combined weight (total from the property) of VOCs less than 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C of



this Section. Surface coating facilities on any property in parishes other than Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that when uncontrolled have a potential to emit a combined weight of VOCs less than 100 pounds (45 kilograms) in any consecutive 24-hour period or 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C of this Section. Any surface coating facility with VOC emissions of less than or equal to 15 pounds (6.8 kilograms) per day is exempt from the provisions of Table 1, Items 1, 7, and 15 of Subsection C of this Section.

7. - 9. ...

10. Control techniques for use of industrial cleaning solvents include:

- a. covering open containers and used applicators;
- b. minimizing air circulation around cleaning operations;
- c. properly disposing of used solvent and shop towels;
- d. implementing equipment practices that minimize emissions (e.g., keeping arts cleaners covered, maintaining cleaning equipment to repair solvent leaks, etc.); and
- e. employing cleaning material with a VOC content limit of 50 grams VOC per liter (0.42 lb./gal.), or a composite vapor pressure of 8 millimeters of mercury at 20 degrees Celsius.

11. Cleaning operations in the course of the following categories are excluded from the requirements of Paragraph D.10 of this Section:

- a. aerospace coating;
  - b. wood furniture coating;
  - c. application of coatings in shipbuilding and ship repair;
  - d. flexible packaging printing;
  - e. lithographic printing;
  - f. letterpress printing;
  - g. flat wood paneling coating;
  - h. large appliance coating;
  - i. metal furniture coating;
  - j. paper, film and foil coating;
  - k. plastic parts coating;
  - l. miscellaneous metals parts coating;
  - m. fiberglass boat manufacturing;
  - n. application of miscellaneous industrial adhesives;
- and
- o. auto and light-duty truck assembly coating.

12. VOC content and vapor pressure limits applicable in cleaning activities in fiberglass boat manufacturing are as follows:

- a. VOC cleaning solvents for routine application equipment cleaning shall contain no more than 5 percent VOC by weight, or have a composite vapor pressure of no more than 0.50 millimeters of mercury at 20 degrees Celsius.
- b. Non-VOC solvents shall be used to remove cured resin and gel coat from application equipment.

13. The following are the only allowable adhesive application methods:

- a. electrostatic spray;
- b. HVLP spray;
- c. flow coat;

d. roll coat or hand application, including non-spray application methods similar to hand application or mechanically powered caulking gun, brush, or direct hand application;

- e. dip coat (including electrodeposition);
- f. airless spray;
- g. air-assisted airless spray; and

h. other adhesive application methods capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

E. - F.4. ...

G. Mandatory Work Practices for Surface Coating. The owner/operator of any facility performing factory surface coating shall comply with the following mandatory work practices:

G.1. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1240 (July 1999), LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007), LR 35:1102 (June 2009), LR 36:1774 (August 2010).

Herman Robinson, CPM  
Executive Counsel

1008#044

## RULE

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

Spill Prevention and Control  
(LAC 33:IX.Chapter 9)(WQ079)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, Title 33, Part IX, Subpart 1, Chapter 9 (WQ079).

This rule change will increase the minimum container volume for applicability of the spill prevention provisions from 660 gallons to 1320 gallons, and will establish a de minimus container size for aggregate container applicability that excludes containers smaller than 55 gallons of oil from consideration. It will also increase the interval between operators' required reviews of their spill prevention plans from three years to five years.

There are also minor corrections of grammar and updates of acronym changes in the Rule. Example: LWPDES to LPDES. This change will make this portion of our rules

similar to the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

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

**Part IX. Water Quality**

**Subpart 1. Water Pollution Control**

**Chapter 9. Spill Prevention and Control**

**§901. Purpose and Scope**

A. This Chapter establishes requirements for contingency planning and implementation of operating procedures and best management practices to prevent and control the discharge of pollutants resulting from spill events. For the purpose of this Chapter, *spill event* means the accidental or unauthorized leaking or releasing of a substance from its intended container or conveyance structure that has the potential to be discharged or results in a discharge to the waters of the state. Discharges resulting from circumstances identified, reviewed, and made part of the public record with respect to a valid LPDES permit are not considered spill events.

B. - C. ...

D. Definitions. The following definitions apply to terms used in this Chapter. Definitions of other terms and meanings of abbreviations are set forth in LAC 33:IX.107.

*Oil*—any kind or form of oil, including but not limited to: fats, oils, or greases from animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and other oils and greases including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, and oil mixed with waste other than dredged spoil.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1779 (August 2010).

**§903. Applicability**

A. The provisions of this Chapter apply to:

1. all substances listed in LAC 33:I.3931 of the Notification Regulations and Procedures For Unauthorized Discharges, other than *oil* as defined in LAC 33:IX.901.D, that are in liquid form at temperatures ranging between 0° and 35°C and pressures at or near 760 mm Hg;

2. *oil* as defined in LAC 33:IX.901.D; and

3. any other substance that the administrative authority declares, in light of the circumstances presented, offers sufficient danger of pollution of the waters of the state to justify application of the provisions of this Chapter.

B. The minimum aboveground storage capacity at which Paragraph A.1 of this Section applies is 1,320 U.S. gallons for two or more individual containers in aggregate within a common storage area, or 660 U.S. gallons for an individual container.

C. The minimum aggregate aboveground storage capacity at which Paragraph A.2 of this Section applies is 1,320 U.S. gallons. For the purposes of this aggregate quantity determination, only containers with a capacity of 55 U.S. gallons or greater are counted.

D. The provisions of this Chapter apply also to any equipment or structures utilized for the conveyance or

transfer (loading/unloading) of applicable substances to/from transportation vehicles or vessels to/from facility storage, processing, or disposal areas. For the purposes of this Chapter, the term *facility* includes those of fixed location when in operation, and that are land based or situated upon or within wetlands and/or surface waters of the state. The requirements of this Chapter shall not apply to off-site transmission pipelines.

E. The storage and conveyance applicability of this Chapter includes, but is not limited to, all substances meeting the applicability criteria outlined in Subsection A of this Section, whether handled as raw materials, products, process intermediaries, byproducts, wastes, process catalysts, lubricants, or fuels.

F. The provisions of this Chapter shall not apply in those cases where applicable substances are stored within process equipment or conveyance structures located in process areas, provided that the drainage from these areas is routed via an LPDES treatment train to a permitted LPDES outfall.

G. The provisions of this Chapter do not require the preparation of a plan for storage or conveyance of substances in solid form except in instances or at facilities where there exists the potential for solid substances to be spilled, released or discharged either directly to waters of the state or to a flowing drainage conveyance that would immediately transport spilled solid substances to waters of the state. In such cases the requirements for preparation of a plan may apply to solid substances for which there is reasonable evidence or cause to believe that an appreciable degradation of water quality would result from a spill or release due to the nature and/or quantity of the solid substances handled. Even if it has been determined that the preparation of a plan is not required for the storage or conveyance of solid substances at a given facility, it is incumbent upon the operator of that facility to avoid potential contamination to the waters of the state.

H. Upon notification to the owner/operator of a facility and demonstration of reasonable cause, the administrative authority may require the preparation of a plan for substances not expressly covered by the applicability requirements of this Chapter.

I. The requirements of this Chapter are intended to complement existing laws, rules, regulations and standards pertaining to the prevention of water pollution. Compliance with this Chapter does not relieve the operator of a facility from compliance with other federal, state or local laws and regulations. Spill Prevention Control and Countermeasure (SPCC) Plans prepared pursuant to 40 CFR Part 112, or manuals prepared relative to any other state or federal requirement, will be acceptable for inclusion in the plan required by this Chapter. A complete plan, however, shall address all applicable substances.

J. Underground Storage Containers—Reserved

K. Drum and Barrel Storage—Reserved

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1779 (August 2010).

**§905. Requirements for Preparation and Implementation of Plans**

A. - E. ...

F. Periodic Review of Plans. Operators of facilities shall review the plan every five years and shall amend the plan within 90 days of the review to include more effective prevention and control technology if such technology will significantly reduce the likelihood of a spill event and if such technology has been field proven at the time of the review.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2545 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007), LR 36:1779 (August 2010).

**§907. Guidelines for the Preparation and Implementation of a Plan**

A. The plan shall be prepared in accordance with sound engineering practices. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items shall be discussed, and the details of installation and operational start-up shall be explained individually. The department recognizes that the designs of major facilities differ and that in certain cases the appropriate methods for spill prevention and control must be site-specific. While the guidelines presented herein suggest the use of specific methodologies for this purpose, alternate methods may be employed if it can be demonstrated to the satisfaction of the department that the alternate methods will adequately prevent and control spills, and that they are reasonably equivalent to the suggested methods. A complete plan shall follow the sequence outlined in LAC 33:IX.903.B-F.

B. - H.5.b. ...

I. Personnel training and spill prevention procedures should be employed, and brief discussions of the following should be included in the plan.

1. Operators are responsible for properly instructing the appropriate personnel in the operation and maintenance of equipment to prevent or contain spills of substances that are subject to this Chapter's provisions, and all applicable spill control rules and regulations associated with substances present on the facility site that are subject to this Chapter's provisions.

I.2. - K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2545 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1780 (August 2010).

Herman Robinson, CPM  
Executive Counsel

1008#045

**RULE**

**Office of the Governor  
Board of Architectural Examiners**

Admission Renewal Procedure (LAC 46:I.1301)

Under the authority of R.S. 37:144 and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners amended LAC 46:I.1301(E) pertaining to the delinquent fee charged to an architect who does not timely renew his or her license. The adopted Rule increases the delinquent fee for an architect domiciled in Louisiana from \$75 to \$105, and the delinquent for an architect domiciled outside Louisiana from \$150 to \$180.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part I. Architects**

**Chapter 13. Administration**

**§1301. Renewal Procedure**

A. - D. ...

E. The failure to renew a license timely shall not deprive the architect of the right to renew thereafter. An individual architect domiciled in Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$105. An individual architect domiciled outside Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$180. The delinquent fee shall be in addition to the renewal fee set forth in §1301.C.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144-145.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 29:563 (April, 2003), amended LR 35:2754 (December 2009), LR 36:1780 (August 2010).

Mary "Teeny" Simmons  
Executive Director

1008#043

**RULE**

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

Fees (LAC 46:XXI.901)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters has amended §901, Fees.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXI. Certified Shorthand Reporters**

**Chapter 9. Fees**

**§901. Fees**

A. The following fees shall be paid to the board.

1. The fee to be paid for the issuance of a reciprocal certificate of registration without board examination is \$125 plus seal fee(s).

2. The fee to be paid upon the issuance and renewal of the certificate of registration \$125 plus seal fee(s).

3. The fee to be paid for a C. C. R. seal is \$20. The minimum requirement of one seal must be purchased upon the issuance or renewal of a certificate. The maximum number of seals that may be purchased is three per certificate holder.

4. The fee to be paid for the purchase of a list of names and addresses of current reporters is \$25.

5. The fee to be paid for reinstatement of a suspended or revoked certificate is the payment of all delinquent fees, plus \$25 for a certificate delinquent for a period of up to one year, \$100 for a certificate delinquent for a period of up to two years, \$200 for a certificate delinquent for a period of two or more years.

6. The fee to be paid for the skills portion of the examination is \$125 and the fee to be paid for the written knowledge portion of the examination is \$140. If the board should find an applicant ineligible for examination, it shall refund eighty percent of the fee paid by said applicant. In no other event shall any refund be made.

7. The fee to be paid for the qualifying test of Q and A at 225 wpm is \$50.

8. The fee to be paid for an NSF check issued to the board is the current bank charge.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554 and 2558.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:680 (October 1983), amended LR 10:279 (April 1984), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:531 (August 1988), LR 17:34 (January 1991), LR 17:578 (June 1991), LR 19:1541 (December 1993), amended by the Office of the Governor, Board of Examiners of Shorthand Reporters, LR 34:434 (March 2008), LR 36:1781 (August 2010).

Milton Donegan, Jr.  
Chairman of the Finance Committee

1008#085

**RULE**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Disproportionate Share Hospital Payments  
Mental Health Emergency Room Extensions  
(LAC 50:V.2711)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.2711 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 3. Disproportionate Share Hospital Payments**

**Chapter 27. Qualifying Hospitals**

**§2711. Mental Health Emergency Room Extensions**

A. Medicaid-enrolled non-state, acute care hospitals that establish a Mental Health Emergency Room Extension (MHERE) and sign an addendum to the Provider Enrollment form (PE-50) by July 1, 2010 shall be reimbursed for their net uncompensated care costs for psychiatric services rendered to patients.

A.1. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1628 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1781 (August 2010).

Anthony Keck  
Secretary

1008#108

**RULE**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Laboratory and Radiology Services  
Radiology Utilization Management  
(LAC 50:XIX.4501)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XIX.4501 under the Medical Assistance Program as authorized by 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XIX. Other Services**

**Subpart 3. Laboratory and Radiology**

**Chapter 45. Radiology Utilization Management**

**§4501. General Provisions**

A. - C. ...

D. The following Medicaid recipients are excluded from radiology utilization management:

1. Family Planning Waiver recipients;
2. LaCHIP Affordable Plan recipients;
3. Program of All Inclusive Care for the Elderly (PACE) recipients;
4. Native American recipients; and
5. recipients who have primary health insurance coverage provided by:
  - a. Medicare; or
  - b. a private health insurance carrier.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2758 (December 2009), amended LR 36:1781 (August 2010).

Anthony Keck  
Secretary

1008#109

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Nursing Facilities—Reimbursement Methodology  
Rate Determination  
(LAC 50:VII.1305)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:VII.1305 in the Medical Assistance Program as authorized by R.S. 46:2742(B)(7), Act 244 of the 2009 Regular Session of the Louisiana Legislature and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part VII. Long Term Care Services**

**Subpart 1. Nursing Facilities**

**Chapter 13. Reimbursement**

**§1305. Rate Determination**

A. ...

B. For dates of service on or after January 1, 2003, the Medicaid daily rates shall be based on a case-mix price-based reimbursement system. Rates shall be calculated from cost report and other statistical data.

1. Effective July 3, 2009, and at a minimum, every second year thereafter, the base resident-day-weighted median costs and prices shall be rebased using the most recent four month or greater unqualified audited or desk reviewed cost reports that are available as of the April 1, prior to the July 1, rate setting. The department, at its discretion, may rebase at an earlier time.

a. For rate periods between rebasing, an index factor shall be applied to the base resident-day weighted medians and prices.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1556 (July 2010), amended LR 36:1782 (August 2010).

Anthony Keck  
Secretary

1008#110

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Outpatient Hospital Services  
Radiology Utilization Management (LAC 50:V.6105)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.6105 under the Medical Assistance Program as authorized by 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 61. Other Outpatient Hospital Services**

**Subchapter A. General Provisions**

**§6105. Radiology Utilization Management**

A. - C. ...

D. The following Medicaid recipients are excluded from radiology utilization management:

1. Family Planning Waiver recipients;
2. LaCHIP Affordable Plan recipients;
3. Program of All Inclusive Care for the Elderly (PACE) recipients;
4. Native American recipients; and
5. recipients who have primary health insurance coverage provided by:
  - a. Medicare; or
  - b. a private health insurance carrier.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:67 (January 2010), amended LR 36:1782 (August 2010).

Anthony Keck  
Secretary

1008#110

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Pharmacy Benefits Management Program  
Medication Administration  
H1N1 Immunizations  
(LAC 50:XXIX.123 and 991)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XXIX.123 and §991 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 1. General Provisions**

**§123. Medication Administration**

A. H1N1 Vaccine Administration. The department shall provide coverage for administration of the H1N1 vaccine by a qualified pharmacist when:

1. the pharmacist has been credentialed by the Louisiana Board of Pharmacy to administer medications; and

2. the pharmacist is Medicaid-enrolled.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010).

**Chapter 9. Methods of Payment**

**Subchapter H. Medication Administration Payments**

**§991. Vaccine Administration Fees**

A. Effective for dates of service on and after October 10, 2009, the reimbursement to pharmacies for immunization administration (intramuscular or intranasal) performed by qualified pharmacists, is a maximum of \$15.22. This fee includes counseling, when performed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010).

Anthony Keck  
Secretary

1008#112

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Targeted Case Management  
Nurse Family Partnership Program  
Reimbursement Rate Reduction  
(LAC 50:XV.10701, 11101 and 11103)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50.XV.10701, 11101 and 11103 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 7. Targeted Case Management**

**Chapter 107. Reimbursement**

**§10701. Reimbursement**

A. - E.3 ...

F. Effective for dates of service on or after July 1, 2009, the reimbursement for case management services provided to participants in the Nurse Family Partnership Program shall be reduced to \$115.93 per visit.

1. Medicaid reimbursement shall be limited to prenatal and postnatal services only. Case management services provided to infants and toddlers shall be excluded from reimbursement under the Nurse Family Partnership Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), LR 35:73 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), amended LR 36:1783 (August 2010).

**Chapter 111. Nurse Family Partnership Program**

**§11101. Introduction**

A. - B. ...

C. Case management services rendered in the Nurse Family Partnership Program shall be limited to prenatal and postnatal services only.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), LR 34:1036 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010).

**§11103. Recipient Qualifications**

A. - B. ...

C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), LR 34:1037 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010).

Anthony Keck  
Secretary

1008#113

**RULE**

**Department of Natural Resources  
Office of Conservation**

Exploration and Production Site Groundwater Evaluation  
and Remediation—Statewide Order No. 29-B  
(LAC 43:XIX.Chapter 8)

This Rule was inadvertently published in the July 20, 2010 *Louisiana Register* on pages 1562-1563. Prior to publication, the department decided not to finalize this Rule and advised the Office of the State Register of its intent in a letter received on June 25, 2010. This Rule was printed in error and has not been incorporated into the Louisiana Administrative Code.

James H. Welsh  
Commissioner

1008#070

**RULE**

**Department of Public Safety and Corrections  
Corrections Services**

Medical Reimbursement Plan  
(LAC 22:I.2101, 2103, and 2105)

In accordance with the provisions of R.S. 15:831, the Department of Public Safety and Corrections, Corrections Services, hereby amends the contents of LAC 22:I.2101, 2103, and 2105, Medical Reimbursement Plan.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 21. Medical Reimbursement Plan**

**§2101. Medical Reimbursement Plan**

A. Purpose—to provide for the implementation and administration of an offender co-payment program.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, and the sheriff or administrator of local jail facilities. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that medical co-payments must comply with the provisions of R.S. 15:831(B)(1).

D. Procedures

1. Offenders Housed in State Institutions

a. Procedures concerning medical co-payments shall be followed in accordance with procedures established by the department's medical/mental health director.

b. Offenders shall file a claim with a private medical or health care insurer (or any public medical assistance program under which the offender is covered and from which the offender may make a claim), for payment or reimbursement of the cost of any such medical treatment. Upon receipt of the claim proceeds, the offender shall reimburse the department for the cost of medical services provided.

2. State Offenders Housed in Local Jail Facilities

a. Any plan for reimbursement of medical and dental expenses incurred by a state offender housed in a local jail facility shall be approved by the secretary prior to implementation of the plan. The plan shall contain language that stipulates that no offender will be denied medical care because of an inability to pay reimbursement or co-payments.

b. The facility shall require that the offender file a claim with a private medical or health care insurer (or any public medical assistance program under which the offender is covered and from which the offender may make a claim), for payment or reimbursement of the cost of any such medical treatment. Upon receipt of the claim proceeds, the offender shall reimburse the facility for the cost of medical services provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:831.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services LR26:331 (February 2000), amended LR 26:2623 (November 2000), amended

LR 31:1100 (May 2005), repromulgated LR 31:1343 (June 2005), amended LR 36:1784 (August 2010).

**§2103. Applicability**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:831(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services LR 26:331 (February 2000), amended LR 31:1100 (May 2005), repromulgated LR 31:1343 (June 2005), repealed LR 36: 1784 (August 2010).

**§2105. Medical Reimbursement Plan Pursuant to R.S.  
15:831(B)(1)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:831(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:331 (February 2000), amended LR 26:2623 (November 2000), LR 31:1100 (May 2005), repromulgated LR 31:1343 (June 2005), repealed LR 36:1784 (August 2010).

James M. Le Blanc  
Secretary

1008#052

**RULE**

**Department of Public Safety and Corrections  
Office of Juvenile Justice**

Educational and Work Assignment Experience Incentive  
Program (LAC 22:I.723)

In accordance with the applicable provisions of R.S. 39:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 36:405, the Department of Public Safety and Corrections, Division of Youth Services, Office of Juvenile Justice has promulgated §723. Educational and Work Experience Incentive Program. The deputy secretary's purpose for promulgating this Rule is to provide youth the opportunity to acquire employability skills, and to develop a good work ethic through employment in on-campus and off-campus jobs, and to provide pay incentives for accomplishment of specific academic goals; and to integrate restorative justice by assessing a percentage of a youth's incentive compensation in order to make payment toward restitution.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE,  
AND LAW ENFORCEMENT**

**Part I. Corrections**

**Chapter 7. Youth Services**

**Subchapter B. Classification, Sentencing and Service  
Functions**

**§723. Educational and Work Assignment Experience  
Incentive Program**

A. Purpose—to provide youth the opportunity to acquire employability skills, and to develop a good work ethic through work assignments on-campus and off-campus, and to provide pay incentives for accomplishment of specific academic goals; and to integrate restorative justice by assessing a percentage of a youth's incentive compensation in order to make payment toward restitution.

B. Applicability—deputy secretary, undersecretary, assistant secretary, deputy assistant secretaries, deputy undersecretary, facility directors, principals, and all OJJ secure care youth.

C. Policy. It is the deputy secretary's policy that there shall be an Educational and Work Experience Incentive Program to provide educational incentives, job assignment training and work opportunities to youth in secure facilities to facilitate their reintegration into the community as responsible citizens upon release from commitment.

D. Definitions

*Education Program Coordinator (EPC)*—an educational employee appointed by the Principal who is charged with the responsibility of initial start up, coordination and oversight of the Educational Incentive Program.

*Global Positioning System (GPS)-Active*—a constellation of orbiting satellites put in place by the US Military, and now used for many tracking services. In the OJJ application of GPS, a youth shall wear a GPS receiving device, most likely an ankle bracelet, which will allow a remotely-located person to monitor the youth's exact location 24 hours a day, 7 days a week.

*Off-Campus Work Assignment Program Board of Directors (Work Assignment Program Board)*—a board of directors at each facility where youth are participating in the Off-Campus Work Assignment Program, who shall meet twice a month to discuss the progress of youth assigned off campus, and shall meet as necessary to consider requests for new youth off-campus assignments, and who shall make final decisions regarding off-campus youth assignments, except for those youth adjudicated for offenses falling under Children's Code Article 897.1 as noted in Section IX of this policy. The Board shall be comprised of the following members:

- a. facility director;
- b. principal/assistant principal;
- c. work assignment program coordinator (WAPC);
- d. vocational education teachers;
- e. SSD regional coordinator (if applicable);
- f. youth's probation officer;
- g. program manager;
- h. youth's assigned case manager.

*Off-Campus Work Assignment Supervisor*—work assignment supervisor responsible for supervising and evaluating youth assigned off-campus.

*On-Campus Work Assignment Supervisor*—an employee who supervises and evaluates youth assigned to on campus work assignments.

*Restitution-Court-Ordered*—money that a youth has been ordered to pay by a court.

*Restitution-Owed to the Facility*—money a youth has been ordered to pay through the disciplinary process to reimburse the facility for financial loss due to his misconduct.

*SCR/Contren modules*—student competency record as established by a particular trade/Contren Learning Series provides the training curricula in more than 30 trades. Contren modules are groupings of classes vocational students must complete to receive credentials in their trade that are nationally recognized.

*Work Assignment Placement Staffing*—a staffing held to place, remove or reassign youth in the on-campus work assignment program. Required participants are as follows:

- a. work assignment program coordinator (WAPC);
- b. on-site work assignment supervisor;
- c. program manager;
- d. case manager.

*Work Assignment Program Coordinator (WAPC)*—an employee appointed by the director, after receiving recommendations from the Principal, who shall be supervised by the director/designee, and who is charged with the responsibility of initial start up, coordination and oversight of the Work Assignment Incentive Program.

*Youth Portfolio*—the portfolio is used as a purposeful collection of student work assignment that exhibits the student's efforts, progress and achievements in one or more areas.

E. Educational Incentive Program. The Educational Incentive Program encourages youth to accomplish certain educational goals through participation in the Directors' Club, which offers recognition, participation in special activities and rewards.

1. Eligibility:

- a. youth enrolled in the GED program;
- b. youth earning Carnegie units;
- c. youth enrolled in vocational programs;
- d. youth enrolled in an educational/training program leading to college course work; or
- e. youth earning a certificate of achievement.

2. Enrollment. Enrollment applications for the Educational Incentive Program [Attachment B.7.2(a)] shall be made available to youth in all living areas and schools. Completed applications are to be turned into the EPC, who shall verify the youth's eligibility to enroll. Upon verification the youth shall be entered into the program.

3. Youth Progress. Youth progress, including accomplishments and verification of accomplishments, shall be monitored and reported by the EPC on the Educational Incentive Program Tracking Form [Attachment B.7.2 (b)] to the principal.

4. Verification of Education Goals. Youth enrolled in eligible educational programs who meet the goals outlined below will be entitled to participate in the Director's Club once written verification/certification is received. Verification of a youth's accomplishments must accompany the Educational Incentive Program Tracking Form and be maintained in the youth's portfolio. Required verifications/certifications are as follows.

a. For youth enrolled in the GED program or earning Carnegie units, passing the GED test or earning a high school diploma.

b. For youth enrolled in vocational programs, completion of programs/ certifications such as: completion of major components of the Student Competency Record (SCR) as established by the respective trade, completion of contren modules, or attainment of other nationally recognized certifications. Other achievements may be recognized at the discretion of the facility director.

5. Director's Club Activities. With the approval of the director, the EPC shall develop and implement programs which recognize youth for accomplishment of educational goals. Special activities such as off campus trips to colleges



or trade schools should be provided when possible. Contingent upon resources, small gifts or monetary rewards may also be available.

6. Program Availability. Not all programs and opportunities are available at all facilities due to restrictions imposed by funding, grants, physical plant, and community participation. The Directors' Club activities and rewards are based on the availability of resources.

F. On-Campus Work Assignment Incentive Program. The On-Campus Work Assignment Incentive Program provides youth with the opportunity to acquire marketable skills, necessary work habits and work experience. Incentive payments will be made based on available resources. All OJJ secure care youth, who have received their GED, high school diploma, or certificate of achievement, are eligible for this program, subject to the screening and placement requirements in Section C.

1. Hours and Incentive

a. Louisiana law provides that youth under the age of 16 may be permitted to work hours per day or no more than 40 hours per week after school hours and during non-school days.

b. Louisiana law provides that youth 16 years of age and older may work any number of hours per day and per week.

c. Incentive to youth may be in the form of wages, learning a skill or gaining work experience.

d. Beginning incentive shall be five cents per hour, and through merit raises, may increase to a maximum of ten cents per hour. Merit raises of one cent per hour may be awarded upon the recommendation of the work assignment supervisor, with the approval of the work assignment program coordinator (WAPC) and director. Payment of incentives and merit raises are contingent upon available resources. If compensation is through the payment of incentives, hourly payments shall range from five to ten cents per hour.

e. Incentives paid shall be deposited in accordance with the procedures established in YS Policy No. B.9.3 "Youth Banking".

2. Job Assignment Announcements and Applications

a. Job assignment announcements shall be developed by potential work assignment supervisors and the WAPC. All Job Assignment Announcements shall be approved by the facility director prior to posting.

b. Job assignment announcements and the Work Experience Incentive Program Application forms shall be posted in all living areas and schools.

3. Application Review and Placement

a. The WAPC shall conduct an initial review of a youth's application to participate in the On Campus Work Assignment Incentive Program, and shall provide copies of the youth's application to the persons attending the Work Assignment Placement Staffing. The copies shall be distributed prior to the staffing to facilitate review of the application.

b. A Work Assignment Placement Staffing shall be held to discuss and reach a consensus concerning the youth's placement in the On Campus Work Assignment Program. The youth shall be in attendance at this staffing.

c. The outcome of the staffing shall be forwarded to the director for final approval.

4. Medical Clearance. All youth must receive medical clearance prior to beginning work assignments. Medical clearance is defined as "the clinician has found the youth to be physically fit, emotionally stable, and the work assignment does not interrupt the youth's prescribed daily medication schedule". The medical clearance shall be documented in the youth's medical record and a copy sent to the WAPC for filing with the youth's application, utilizing the Medical Clearance Form.

5. Youth's Notification

a. A completed Youth Notification Form confirming a youth's placement in a particular job assignment, following medical clearance, shall be sent to the youth, the work assignment supervisor, the youth's assigned counselor, the dorm leader assigned to the youth's living area, and the youth's portfolio within five working days.

b. A completed Youth Notification Form shall also be sent to those youth who timely applied and were not selected to participate within five days.

6. Work Assignment Program Agreement. An orientation, conducted by the work assignment supervisor, shall be held on the youth's first day of work. A Work Assignment Program Agreement form shall be signed by the youth and work assignment supervisor. The original document shall be maintained by the WAPC, with a copy placed in the youth's portfolio.

7. Weekly Performance Evaluation and Incentive Schedule

a. The work assignment supervisor shall complete a Weekly Performance Evaluation form, documenting how the youth has functioned in his job assignment, along with a Youth Work Assignment Incentive Schedule form and forward these documents to the WAPC on a weekly basis. The work assignment program coordinator shall forward the Youth Incentive Schedule to the facility business office for calculation and processing of the youth's incentive payment. Payments to the youth shall be made from the Youth Welfare Fund in accordance with the guidelines outlined in YS Policy No. B.9.3 "Youth Banking".

b. Copies of all evaluation forms, hours worked, and any other documentation related to performance and pay shall be maintained by both the work assignment supervisor and the WPC, with copies placed in the youth's portfolio.

c. A poor performance evaluation as documented on the work assignment supervisor's Weekly Performance Evaluation Form shall result in a documented conference between the WAPC, the work assignment supervisor, the youth, and the youth's assigned case manager. Youth may be subject to removal from the assigned program or reassignment if the behavior does not improve by the next weekly evaluation report.

8. Removal from Job

a. A work assignment supervisor, the WAPC, the youth's case manager or the group leader assigned to the youth's living area may request removal of a youth from a job assignment by completing a Work Assignment Removal Request and submitting it to the WAPC. The request shall be heard within two working days of receipt of the Work Assignment Removal Request at a Work Assignment Placement Staffing, which the youth shall attend. If a youth is removed from a job assignment as a result of a staffing or due to poor performance evaluations, a new job assignment

shall not occur again for a minimum of 14 days. If the reason for removal was based on a Major Violation Report or a serious incident, the youth shall not be eligible for job reassignment for 90 days.

b. A youth may request the WPC remove him from a current job assignment and/or consider him for another job reassignment by completion of a new Youth Work Assignment Application form.

9. Life Skills Instruction. Instruction and discussion/activities about life skills shall be incorporated into the LaMod process.

G. Off-Campus Work Assignment Incentive Program. The Off-Campus Work Assignment Incentive Program provides work assignment training opportunities with public or private entities and businesses for youth who have obtained a GED or received a high school diploma, with the goal of acquiring necessary work habits, development of marketable skills, work experience and pay incentives.

1. Eligibility:

a. youth who have obtained a GED or high school diploma;

b. written permission has been obtained from a parent/guardian for youth under the age of 18;

c. youth who have demonstrated a willingness and ability to work at locations off of the facility grounds without posing a safety risk to individuals and/or the community, and who are otherwise qualified;

d. youth who are not under investigation for or have a detainer pending legal charges;

e. youth who are not deemed to be a high risk for runaway or escape and/or engaging in additional criminal conduct.

2. Hours and Compensation

a. Louisiana law provides that youth under the age of 16 may be permitted to work eight hours per day or no more than 40 hours per week after school hours and during non-school days.

b. Louisiana Law provides that youth 16 years of age and older may work any number of hours per day and per week.

c. Incentive to youth may be in the form of wages paid by the employer, learning a marketable skill or gaining work experience.

d. Incentive paid shall be deposited in accordance with the procedures established in YS Policy No. B.9.3 "Youth Banking".

e. Incentive wage statements reflecting earnings and available funds shall be provided to the youth following each transaction, detailing balances for drawing accounts, savings accounts and restitution payments.

3. Work Assignment Prohibitions (R.S. 23:161)

a. Louisiana law prohibits minors from being employed in the following occupations:

i. hazardous operations or more than 12 feet above the ground or floor;

ii. with certain dangerous power-driven machinery, punch presses, milling machines, circular saws, radial saws, etc.;

iii. any job or site that is hazardous or injurious to life, health, safety or welfare.

b. Employer must comply with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) Standards.

4. Job Announcements and Applications. The WAPC shall locate suitable job openings through contacts, web searches, and other means as appropriate. Job announcements, applications, and eligibility requirements for off-campus job assignments shall be posted in all living areas and schools.

5. Application Screening and Placement

a. The WAPC shall conduct an initial screening for appropriateness of a youth's participation in the Off-Campus Work Assignment Incentive Program by completing the Screening/Approval Request. Factors such as age, completion of educational requirements, interest, degree of motivation, information gained from youth's assigned case manager and the dorm leader assigned to the youth's living area, as well as adjudication information, shall be documented. The WAPC shall forward each youth's application with his screening report to the members of the Work Assignment Program Board for their review prior to the next scheduled meeting.

b. The Work Assignment Program Board shall meet as needed to make recommendations concerning job placement for youth. The board discussions shall include topics addressed during staffings for furloughs/early release such as the following:

i. is youth on minimum or medium custody level at first quarterly staffing and has a low or moderate offense on the Severity of Offense Scale;

ii. is youth on minimum or medium custody level at the second quarterly staffing if offense is a high or highest offense on the Severity of Offense Scale;

iii. has youth made progress on identified treatment needs;

iv. has youth received a violation report for, and been found guilty of, a Major Code of Conduct Violation within the last 90 days for:

(a). assault or threats of assault (youth/youth);

(b). assault or threats of assault (youth/staff);

(c). contraband (only a positive drug screen or weapon);

(d). escape;

(e). threats and intimidation; or

(f). gang/gang-like organization/activity.

c. The Work Assignment Program Board shall forward its recommendation to the deputy secretary/designee who shall make the final decision for OJJ regarding job placement except for those youth adjudicated for an offense under Children's Code Article 897.1 (see Section 1) or for a sex offense for which the youth is required to register (see Section 10).

d. The WPC shall schedule an interview with prospective employers and prospective youth to discuss work prohibitions, work assignments, evaluation processes, progressive discipline procedures and security procedures.

6. Medical Clearance. Youth must have medical clearance prior to beginning a work assignment. Medical clearance is defined as "the clinician has found the youth to be physically fit, emotionally stable, and the work

assignment does not interrupt the youth's prescribed daily medication schedule". Medical clearance shall be documented in the youth's medical record and a copy sent to the WAPC for filing with the youth's application, utilizing the Medical Clearance Form.

#### 7. Youth's Notification

a. A completed Youth Notification Form confirming a youth's placement in a particular job assignment, following medical clearance, shall be sent to the youth, the parent/guardian, the work assignment supervisor, the youth's assigned counselor, the dorm leader assigned to the youth's living area, and the youth's portfolio within five working days.

b. A completed Youth Notification Form shall also be sent within five days to those youth who timely applied and were not selected to participate.

8. Work Assignment Program Agreement. A youth orientation shall be conducted, while the WAPC is on-site, by the work assignment supervisor on the youth's first day of work. The Work Assignment Program Agreement form shall be completed following the orientation by the youth, the work assignment supervisor and WAPC. The original agreement shall be maintained by the WAPC, with a copy placed in the youth's portfolio.

#### 9. Weekly Performance Evaluation and Incentive Schedule

a. The work assignment supervisor shall complete a Weekly Performance Evaluation Form, documenting how a youth has functioned in his job assignment, along with a Youth Work Incentive Schedule form and forward these documents to the WAPC on a weekly basis. The WAPC shall forward the Youth Incentive Schedule to the facility business office for calculation and processing of the youth's incentive payment if applicable. Payments to the youth's account shall be made in accordance with the guidelines outlined in YS Policy No. B.9.3 "Youth Banking".

b. Copies of all evaluation forms, payroll work assignment hours, and any other documentation related to performance and incentive pay shall be maintained by both the work assignment supervisor and the WAPC, with copies placed in the youth's portfolio.

c. A poor performance evaluation as documented on the work assignment supervisor's Weekly Performance Evaluation form shall result in a documented conference between the WAPC, the work assignment supervisor, the youth, and the youth's assigned case manager. Youth may be subject to removal from the program or reassignment to an on-campus work assignment if the behavior does not improve by the next weekly evaluation report.

#### 10. Removal from Job

a. A work assignment supervisor, the WAPC, the youth's case manager or the dorm leader assigned to the youth's living area may request removal of a youth from a job assignment by completing a Work-Assignment Removal Request. This request is to be submitted to the WAPC. The request shall be heard at a meeting of the Board, which the youth shall attend, within two working days of receipt of the Work-Assignment Removal Request. If a youth is removed from a job assignment as a result of a staffing or due to poor performance evaluations, a new job assignment shall not occur again for a minimum of 14 days. If the reason for removal was based on a Major Violation Report or a serious

incident, the youth shall not be eligible for job reassignment for 90 days.

b. A youth may request the WAPC remove him from a current job assignment and/or consider him for another job assignment by completion of a new Youth Work Application Form.

11. Life Skills Education. Instruction and discussion/activities about life skills shall be incorporated into the LaMod process.

#### 12. Risk Management Procedures

a. Youth shall be fitted with an active Global Position System (GPS) for tracking and monitoring purposes.

b. Youth shall report to the WAPC at the beginning and end of each work day for placement and removal of the GPS tracking system on their person.

c. The WAPC shall be responsible for monitoring of the GPS tracking system for each youth on a daily basis and maintaining all reports.

d. A weekly GPS tracking report for each applicable youth shall be compiled and forwarded to the director for review.

e. Facility search procedures for youth shall be completed on a daily basis for all participating youth in accordance with YS Policy No. C.2.3.

f. Facility staff shall transport youth back and forth to their job assignment each day.

g. Any security problems noted for steps a – f above shall immediately be brought to the attention of the director.

H. Off-Campus Work Assignment Incentive Program for Youth Adjudicated Under Children's Code Article 897.1. All steps in Subsection G of this Section must be adhered to for those youth adjudicated under Children's Code Article 897.1 seeking placement in an off-campus work incentive program. Youth adjudicated for Aggravated Rape who are required to register as a Sex Offender, must also comply with Subsection I below. Additionally, the youth's application must go through the following steps.

1. Approval from both the Off-Campus Work Assignment Program Board of Directors, as well as the deputy secretary/designee must be granted utilizing the Screening/Approval Request form.

2. Following approval of the deputy secretary/designee, a Notice to the Court and district attorney of the Work Assignment Incentive Program Furlough utilizing the "Off-Campus Work Assignment Incentive Program Screening/Approval Request", shall be sent to the judge sentencing the youth for the Ch.C. Art. 897.1 offense, and also include a progress report containing the following:

- a. educational/vocational information;
- b. amount/percentage of time served for adjudicated commitment;
- c. current custody level;
- d. treatment progress;
- e. parental/guardian involvement or contact attempts in youth's treatment.

3. The judge and district attorney must approve the work furlough for the youth to leave the grounds. If the district attorney objects, the OJJ attorney shall request that a contradictory hearing be set in the matter.

I. Off-Campus Work Assignment Incentive Program for Youth Adjudicated Delinquent for a Sex Offense for Which the Youth Is Required To Register. All steps in Subsection G of this Section must be adhered to for those youth seeking placement in an off-campus work assignment incentive program who have been adjudicated delinquent for a sex offense for which the youth is required to register. Additionally, the youth's application must go through the following steps to be approved.

1. Approval from both the Off-Campus Work Assignment Program Board, as well as the deputy secretary/designee must be granted utilizing the "Off-Campus Work Assignment Incentive Program Screening/Approval Request".

2. Following approval by the deputy secretary/designee, the Central Office Furlough Coordinator shall notify the Louisiana Bureau of Criminal Identification and Information (Bureau) of the work furlough by completing and faxing the "Notification of Granting of Off-Campus Work Assignment Incentive Program Furlough", to the bureau 48 hours prior to the youth reporting to the off-campus work assignment. The notification and proof of its transmission shall be maintained by the Central Office Furlough Coordinator with copies forwarded to the WAPC and the director.

J. Drug Screening. Periodic drug screens shall be conducted in accordance with Youth Services Policy C.2.7 or at the discretion of the director.

K. Restitution. Incentive payments made to a youth are subject to the payment of restitution assessed through the disciplinary process in accordance with Youth Services Policy B.5.2 and/or by order of the court for restitution.

L. Program Report. An annual report shall be prepared by both the education program coordinator and the work assignment program coordinator and submitted to the deputy secretary/designee. The report shall include the number of youth who have participated in the program, the number of job assignments, job assignment duration, educational and work assignment incentive amounts paid, and restitution payment amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:905, and 36:405.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Division of Youth Services, Office of Juvenile Justice, LR 36:1784 (August 2010).

Mary L. Livers  
Deputy Secretary

1008#080

## RULE

### Department of Public Safety and Corrections Office of State Police

#### Motor Vehicle Inspection (LAC 55:III.813)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., Act 138 of the 2009 Regular Session, and R.S. 32:1304 et seq., hereby promulgates amended rules providing for a simplified brake test to be conducted by inspection stations

and extending the medical exemption (to the window tint requirements) for persons over 60 years of age.

## Title 55

### PUBLIC SAFETY

#### Part III. Motor Vehicles

#### Chapter 8. Motor Vehicle Inspection

##### §813. Required Equipment

A. - C.5. ...

D. Brakes

1. Every vehicle required to be equipped with brakes must be tested. The mechanic inspector shall take physical control of the vehicle presented for inspection to determine if the brakes are operating correctly.

2. The test shall be made on a substantially level, dry, smooth, hard surface that is free from loose material. The vehicle shall not pull to the right or the left causing the vehicle to excessively alter its direction of travel.

3. A platform brake tester may be used instead of performing the brake test. Before attempting to inspect a vehicle's brakes with a platform brake tester, the mechanic inspector shall be trained on and have experience in the use of the machine. The machine shall have adequate capacity. The mechanic inspector shall follow all tester manufacturers' directions.

4. Classifications for Brake Application

a. Single unit vehicles with a manufacturer's gross weight rating of 10,000 pounds or more shall have a braking distance of 40 feet.

b. Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of 3,000 pounds or less shall have a braking distance of 40 feet.

c. Buses, regardless of the number of axles, not having a manufacturer's gross weight rating shall have a braking distance of 40 feet.

d. All combinations of vehicles in drive away, tow-away operations shall have a braking distance of 40 feet.

e. All other combination vehicles shall have a braking distance of 50 feet.

E. Brake Requirement

1. Any vehicle registered as a farm trailer, farm semi-trailer, rubber-tired farm wagon, drawn rubber-tired farm equipment or implements of husbandry manufactured or assembled prior to January 1, 1973, and operated or moved only incidentally on the highways of this state, shall be exempt from brake requirements provided that:

a. the gross weight does not exceed 10,000 pounds;

b. the speed does not exceed 30 miles per hour;

c. fertilizer distributors or spreaders are exempt from brake requirements. Commercially owned anhydrous ammonia nurse tank trailers used for the transportation and storage of fertilizer are exempt from the braking requirements.

2. Every registered vehicle when presented for inspection shall be equipped with brakes in accordance with the requirements herein stated.

a. Every motor vehicle, other than motorcycles or motor driven cycles, shall be equipped with brakes adequate to control movement of and to stop and hold movement of such vehicle. Two separate means of applying brakes are required, each of which shall effectively apply brakes to at least two wheels.

b. Every motorcycle and every motor driven cycle shall be equipped with at least one brake which may be operated by hand or foot.

c. Every motorcycle and every motor driven cycle manufactured with two wheels shall be required to be equipped with brakes on both wheels.

d. Every 1963 or later model year motor vehicle shall be equipped with brakes on all wheels.

e. Every trailer or semi-trailer exceeding 3,000 pounds gross weight shall be equipped with brakes acting on all wheels.

3. The following exceptions exist.

a. Trailers and semi-trailers having a gross weight between 3,000 pounds and 5,000 pounds need only be equipped with brakes on a single axle.

b. Trailers and semi-trailers manufactured or assembled prior to January 1, 1963, need only be equipped with brakes on a single axle provided the combination of vehicles, consisting of the towing vehicle and its total load, is capable of complying with the performance requirements.

c. Farm trailers and semi-trailers manufactured or assembled prior to January 1, 1973, need not be equipped with brakes. Every farm trailer and farm semi-trailer manufactured or assembled on or after January 1, 1973, and having a gross weight exceeding 3,000 pounds shall be equipped with brakes in accordance with the requirements set forth above.

d. Log trailers shall be exempt from brake requirements until January 1, 1973, after which time they shall be equipped with brakes in accordance with the requirements set forth above.

e. Trucks and truck-tractors, 1963 and older, which have had an additional axle and wheels (tag axle) added for the purpose of allowing a greater payload must be capable of complying with brake performance requirements for the additional weight or be equipped with brakes on the additional tag axle in order to meet the brake performance requirements.

f. Vehicles carrying forest products in their natural state shall not be required to have a brake on the drag axle if the wheels of the drag axle touch the ground only when the vehicle is loaded. However, this provision does not apply to trailers or trucks with more than two axles.

F. - S.3. ...

T. Windows and Glass Sunscreening and Glass Coating

1. - 6. ...

7. Exceptions to the Sunscreen Rule

a. Sunscreen regulations do not apply to windows behind the driver of trucks, buses, trailers, motor homes, multi-purpose passenger vehicles and all windows of vehicles used for law enforcement purposes.

b. Vehicles with sunscreen certificates as stated above.

c. A person with a medical condition which makes that individual sensitive to sun exposure may obtain a Medical Exemption Affidavit form provided by the Department of Public Safety and Corrections from the Office of State Police. The waiver must be completed and signed by an optometrist, or physician, including but not limited to an ophthalmologist, or dermatologist licensed to practice in this state and must be approved by the Deputy Secretary or his designee.. This waiver exempts the vehicle identified on the

affidavit from all restrictions as provided in R.S. 32:361.1. The Medical Exemption Affidavit shall:

i. be valid for a period of not more than 3 years, except for the following provisions;

(a). The registered owner of the vehicle is 60 years and older at the time of application for a Medical Exemption Affidavit, or the individual becomes 60 years old while in possession of a valid Medical Exemption Affidavit, then the affidavit will be valid for the duration of that individual's ownership of the vehicle as provided in LRS 32:361.2(A)(3)(c) unless deemed otherwise by the Department.

(b). The applicant for the Medical Exemption Affidavit is 60 years and older at the time of application for a Medical Exemption Affidavit, or the individual becomes 60 years old while in possession of a valid Medical Exemption Affidavit, but is not the registered owner of the vehicle, in which case the Department shall review the case as provided in LRS 32:361.2(A)(3)(b) and LRS 32:361.2(A)(3)(c).

ii. be valid only for vehicles registered in this state where the registered owner, spouse or immediate family member has an approved affidavit that shall be kept in the motor vehicle at all times;

iii. not be applied for, or issued to, persons convicted of crimes of violence as defined in LRS 14:1 (13) or criminal offenses involving controlled dangerous substances as defined in LRS 40:961 et. Seq.

iv. be returned to applicant, if approved, by U.S. Mail;

v. be non-transferable.

vi. be valid for the duration of ownership of a vehicle whose owner is age 60 years or older.

T.7.d. - EE.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2428 (December 1999), amended LR 28:345 (February 2002), LR 36:1789 (August 2010).

Jill Boudreaux  
Undersecretary

1008#092

## RULE

### Department of Revenue Policy Services Division

National Center for Construction Education  
and Research Apprenticeship Tax Credits  
(LAC 61:I.1909)

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6033, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:I.1909 relative to apprenticeship tax credits.

Act 472 of the 2007 Regular Session of the Louisiana Legislature enacted R.S. 47:6026 to allow apprenticeship tax credits against income and corporation franchise tax to

certain employers. The Section was redesignated as R.S. 47:6033 pursuant to the statutory revision authority of the Louisiana State Law Institute. This Rule clarifies the application of apprenticeship tax credits for certain employers. This Rule only applies to the National Center for Construction Education and Research portion of the apprenticeship tax credit.

**Title 61**

**REVENUE AND TAXATION**

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

**Chapter 19. Miscellaneous Tax Exemptions**

**§1909. National Center for Construction Education and Research Apprenticeship Tax Credits**

A. Revised Statute 47:6033 provides certain employers a non-refundable apprenticeship tax credit against Louisiana individual or corporation income tax or corporation franchise tax equal to one dollar for each hour of employment of each eligible apprentice, not to exceed 1,000 hours for each eligible apprentice.

B. In order to be considered an "eligible apprentice", a student must be enrolled in a training program accredited by the National Center for Construction Education and Research (NCCER), must have successfully completed no less than two levels of training, and must have attained no less than 250 hours of instruction.

1. An apprentice becomes an "eligible apprentice" upon enrollment to the third level and the fourth level of a training curriculum. Enrollment to the third and fourth levels are allowed when successful completion of prior levels of training are achieved.

2. The apprentice will be considered enrolled for the tax year in which the apprentice started a particular level of training.

3. An employer may claim a credit for an "eligible apprentice" only once for each particular level of training.

C. Eligible employers will be responsible for obtaining and retaining student transcript information from the (NCCER) for each eligible apprentice for which the credit is claimed. Employers must also retain:

1. the name of the student enrolled in the training program;
2. the social security number of the student enrolled in the training program;
3. the level of training attained by the student enrolled in the training program;
4. the number of hours worked by the student enrolled in the training program;
5. any other information required by the Secretary of the Department of Revenue.

D. The Louisiana Workforce Commission portion of the apprenticeship tax credit can be found at LAC 40:IX.Chapter 7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6033.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36: 1791 (August 2010).

Cynthia Bridges  
Secretary

1008#049

**RULE**

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

**Reef Fish Harvest Regulations (LAC 67:VII.335)**

The Wildlife and Fisheries Commission does hereby amend LAC 76:VII.335, modifying commercial harvest rules for groupers and tile fishes and recreational bag limits for gag, red grouper and groupers in general, which are part of the existing Rule for daily take, possession, and size limits for reef fishes set by the commission. Authority of adoption of this Rule is included in R.S. 56:6(25)(a), 56:320.2; 56:326.1 and 56:326.3.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§335. Reef Fish—Harvest Regulations**

A. - C.3. ...

D. Commercial Harvest

1. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper, deepwater or shallow-water grouper or any tilefish species, which may not be bartered or sold. No person aboard any vessel shall commercially possess, sell, barter, trade, exchange or attempt to sell, barter, trade or exchange red snapper, or any species of grouper or any tilefish species unless possessing a federal permit for the harvest of Gulf of Mexico Reef Fish and the applicable federal Individual Fishing Quota (IFQ) vessel account.

2. Requirement for federal IFQ vessel account and allocation: In addition to the federal commercial vessel permit for Gulf reef fish, in order to fish for, possess, or land Gulf red snapper, any species of grouper or any tilefish species, regardless of where harvested or possessed, the appropriate federal IFQ vessel account must have been issued to the vessel. No person shall commercially harvest or land red snapper, groupers or any tilefish species without holding or being assigned the appropriate federal IFQ allocation at least equal to the pounds of red snapper, groupers and tilefishes landed/docked at a shore side location or off loaded. On the last fishing trip of the year a vessel may exceed by 10 percent the remaining IFQ allocation.

3. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any red snapper, grouper or tilefish species in excess of any possession limit for which federal commercial license, permit, appropriate allocation, and account were issued.

4. Requirement for federal IFQ dealer endorsement: In addition to the requirement for a federal dealer permit for Gulf reef fish, for a dealer to receive Gulf red snapper or any species of grouper or any tilefish species from a commercial fishing vessel he must have a federal Gulf IFQ dealer

endorsement. For a person aboard a vessel with a federal IFQ vessel account to sell red snapper or any species of grouper or tilefish to anyone other than a permitted dealer, such person must also have a federal Gulf IFQ dealer endorsement.

5. Requirement for NMFS transaction approval code: The owner or operator of a vessel landing red snapper, groupers or tilefish species is responsible for calling National Marine Fisheries Service (NMFS) Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper, groupers or tilefish species are to be received, and the estimated gutted weight of red snapper, grouper and tilefish for each federal IFQ share category (red snapper, gag, red grouper, deep-water grouper, other shallow-water grouper, and tilefish species). For the purpose of these regulations, the term "landing" means tying a vessel to a dock. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of commercial red snapper, groupers or tilefish species from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper, groupers or tilefish species are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper, groupers or tilefish species in possession.

6. Offloading and transfer: No person shall offload from a vessel or receive from a vessel commercially harvested red snapper, groupers or tilefish species during the hours from 6:00 p.m. until 6:00 a.m., local time. No person shall offload red snapper, grouper or tilefish at a location which is not an offloading site approved by NOAA Fisheries and accessible to the public. For the purpose of these regulations, the term "offloading" means removing red snapper, groupers or tilefish species from a vessel. At-sea or dockside transfer of commercial red snapper, groupers or tilefish species from one vessel to another vessel is prohibited.

7. VMS requirement: No person shall commercially harvest red snapper, groupers or tilefish species from a vessel unless that vessel is equipped with a fully operational and federally approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by National Oceanographic and Atmospheric Administration (NOAA) Fisheries and operating under the requirements mandated by NOAA Fisheries.

E. Recreational and commercial minimum and maximum size limits, unless otherwise noted.

Species	Minimum Size Limits
1. Red Snapper	16 inches total length (Recreational) 13 inches total length (Commercial)
2. Gray, yellowtail, cubera, dog, mahogany snapper, and schoolmaster	12 inches total length
3. Lane snapper	8 inches total length
4. Mutton snapper	16 inches total length
5. Vermilion snapper	10 inches total length
6. Red grouper	20 inches total length (Recreational) 18 inches total length (Commercial)

Species	Minimum Size Limits
7. Yellowfin grouper	20 inches total length
8. Gag and black grouper	22 inches total length (Recreational) 24 inches total length (Commercial)
9. Scamp	16 inches total length
10. Greater amberjack	30 inches fork length (Recreational) 36 inches fork length (Commercial)
11. Black seabass	8 inches total length
12. Hogfish	12 inches fork length
13. Banded rudderfish and lesser amberjack	14 inches fork length (minimum size); 22 inches fork length (maximum size)
14. Gray triggerfish	14 inches fork length

F. Definitions. Federal regulations 50 CFR Part 622.2 defines charter vessels and headboats as follows:

*Charter Vessel*—a vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

*Headboat*—a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

G. Seasons

1. Seasons for the commercial harvest of reef fish species or groups shall be closed during the periods listed below. Possession of reef fish in excess of the daily bag limit while on the water is prohibited during the specified closed season. Any reef fish harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. This prohibition on sale/purchase does not apply to reef fish that were harvested, landed ashore, sold and purchased prior to the closed season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing reef fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Species or Group	Closed Season
a. Greater Amberjack	March 1 through May 31

2. Seasons for the recreational harvest of reef fish species or groups listed below shall be closed during the periods listed below.

Species or Group	Closed Season
a. Gag, Black and Red Grouper	February 15 through March 14
b. Red Snapper	October 1 of each year through May 31 of the following year

3. Persons aboard a vessel for which the permits indicate both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain reef fish

under the recreational take and possession limits specified in §335.A and §335.C, recreational seasons specified in §335.G.2 and size limits specified in §335.E, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel.

4. The provisions of §335.G apply to fish taken within or without Louisiana's territorial waters.

H. Wholesale dealers are required to comply with the provisions of R.S. 56:306.5 and R.S. 56:306.6 when acquiring, purchasing, possessing and selling reef fish. Wholesale dealers shall maintain approval codes issued by NOAA Fisheries associated with all transactions of red snapper, groupers and tilefish species on purchases and sales on their records.

#### I.1. Devices

a. Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular or oval, shape.

b. Dehooking device means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

c. Venting device means a device intended to deflate the swim bladder of a fish to release the fish with minimum damage.

2. For a person on board a vessel to fish for or possess Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified below.

a. Non-stainless steel circle hooks. Non-stainless steel circle hooks are required when fishing with natural baits for reef fish.

b. Dehooking device. At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

c. Venting tool. At least one venting tool is required and must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

J. No person who, pursuant to state or federal law, is subject to the jurisdiction of this state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15, for reef fishes while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange reef fishes within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15 law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:320.2(C), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138 (June 1998), LR 24:1139 (June 1998), LR 24:1972 (October 1998), LR 26:793 (April 2000), LR 26:1505 (July 2000), LR 26:2833 (December 2000), LR 31:3166 (December 2005), LR 33:1156 (June 2007), repromulgated LR 33:1397 (July 2007), amended LR 34:2209 (October 2008), LR 34:2682 (December 2008), LR 36:1791 (August 2010).

Robert J. Barham  
Secretary

1008#065



# Notices of Intent

## NOTICE OF INTENT

### Department of Children and Family Services Economic Stability and Self-Sufficiency Section

Child Care Assistance Program (CCAP), Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Supplemental Nutrition Assistance Program (SNAP)

(LAC 67:III. 201, 1223, 1229, 1257, 1501, 1701, 1703, 1709, 1711, 1713, 1911, 1913, 1915, 1917, 1919, 1921, 1923, 1927, 1931, 1932, 1934, 1935, 1938, 1940, 1941, 1945, 1949, 1951, 1953, 1961, 1967, 1969, 1975, 1977, 1978, 1980, 1981, 1983, 1985, 1987, 1988, 1991, 1993, 1995, 1997, 1998, 1999, 2003, 2005, 2007, 2013, 2103, 2105, 2107, 2113, 2117, 5102, 5104, 5106, 5107, 5111, 5113, 5329, 5347, 5501)

The Department of Children and Family Services (DCFS), proposes to amend the *Louisiana Administrative Code* (LAC), Title 67, Part III. Office of Family Support. Adoption is pursuant to the authority granted to the department by the Food and Nutrition Act of 2008, in accordance with federal regulations for the Supplemental Nutrition Assistance Program (SNAP) in 7 CFR, Department of Defense Appropriations Act of 2010 (Section 8120, P.L.111-118), Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant and the Child Care and Development Fund (CCDF).

LAC 67:III. Subpart 3. Food Stamp Program is being changed to LAC 67:III. Subpart 3. Supplemental Nutrition Assistance Program (SNAP).

LAC 67: III. Sections 201, 1257, 1701, 1703, 1709, 1711, 1713, 1911, 1913, 1915, 1917, 1919, 1921, 1923, 1927, 1935, 1938, 1940, 1941, 1945, 1951, 1953, 1961, 1967, 1969, 1975, 1977, 1978, 1981, 1980, 1981, 1985, 1988, 1991, 1993, 1997, 1998, 2003, 2005, 2007, 2013, 2103, 2105, 2107, 2113, 2117, 5104, and 5347 are being amended to change the name of the program and other requirements and language clarifications related to SNAP. The name of the Food Stamp Program was changed as part of the Food and Nutrition Act of 2008. States were encouraged to change their program name.

LAC 67:III. Sections 1229, 1949, 1980, 1983, 1987, and 5329 are being amended to implement broad based-categorical eligibility which will make most if not all households categorically eligible for SNAP benefits while amending countable income and resources. This is a result of the Mississippi Canyon 252 Well Incident.

LAC 67:III. Sections 1223, 1931, 1934, and 1995 are being amended to change alien eligibility criteria to include an Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status. Section 1932 is being repealed to remove the time limitations for certain aliens. This is per a directive from the Department of Agriculture, Food and Nutrition Service (FNS) and 7 CFR Part 273 Food Stamp

Program: Eligibility and Certification Provisions of the Farm and Rural Investment Act of 2002; Final Rule, Section 273.4.

LAC 67:III. Section 1999 is being amended to remove the requirement to send a Notice of Adverse Action when mail is returned by the Post Office as undeliverable. This is per a directive from the Department of Agriculture, Food and Nutrition Services, regarding Simplified Reporting requirements.

LAC 67:III. Sections 1501, 5106, 5107, 5111 and 5113 are being amended to change the Intentional Program Violation (IPV) disqualification time periods for clients participating in the Family Independence Temporary Assistance Program (FITAP) and the Child Care Assistance Program (CCAP) to match the IPV disqualification time periods in SNAP. This amendment will align IPV disqualification time periods in FITAP, CCAP, and SNAP which will provide consistency, thus making it easier for staff to apply IPV disqualification periods and for participants to understand these penalties. Provider eligibility requirements and disqualification time periods will also be amended.

LAC 67:III. Section 5102 is being amended to redefine a Household Designee (HD) where a responsible household member or authorized representative will also be allowed to drop off or pick up a child from an authorized CCAP Provider.

LAC 67:III. Section 5111 is being repealed because the language is being included in Section 5106.

LAC 67:III. Section 5501 is being added to further clarify TANF Initiatives.

These amendments are necessary to align with the Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant; Department of Agriculture, Food and Nutrition Service (FNS); and the Child Care and Development Fund (CCDF).

### Title 67

### SOCIAL SERVICES

### Part III. Family Services

### Subpart 1. General Administrative Procedures

### Chapter 2. Voter Registration Services

### §201. Voter Registration by Mail

A. The Department of Children and Family Services (DCFS) as administrator of the Supplemental Nutrition Assistance Program (SNAP) and the Family Independence Temporary Assistance Program is a designated voter registration agency.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116 and P.L. 103-31, amended in accordance with P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 21:273 (March 1995), amended LR 21:958 (September 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subpart 2. Family Independence Temporary Assistance Program**

### **Chapter 12. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter B. Conditions of Eligibility**

##### **§1223. Citizenship**

A. - A.10. ...

11. an Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 111-118, Section 8120).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:1599 (July 2002), LR 32:1911 (October 2006), Economic Stability and Self-Sufficiency Section, LR 36:

##### **§1229. Income**

A. - A.31. ...

32. any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident in the Gulf of Mexico on April 20, 2010.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2, (j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:1616 (September 2006), LR 32:1912 (October 2006), LR 34:2678 (December 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

##### **§1257. Reporting Requirements**

A. Effective February 1, 2004, a FITAP household that is not included in a SNAP semi-annual reporting household shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A FITAP household that is included in a SNAP semi-annual reporting household is subject to the semi-annual household reporting requirements in accordance with §2013 and must report if the only eligible child moves out of the home.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231 et seq. 7 CFR Part 273, 42 U.S.C. 608, et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:522 (March 2002), amended LR 30:1486 (July 2004), LR 32:264 (February 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Chapter 15. General Program Administration**

### **Subchapter A. Fraud**

#### **§1501. Fraud Control Program**

A. - B.3. ...

C. If an individual who is a member of a family applying for or receiving FITAP is found by a federal or state court or by an administrative hearing to have intentionally made a false or misleading statement or misrepresented, concealed, or withheld facts, or committed any act intended to mislead,

misrepresent, conceal or withhold facts or propound a falsity, for the purpose of establishing or maintaining the family's eligibility for aid or of increasing or preventing a reduction in benefits, then that individual's needs shall not be taken into account in making the eligibility or benefits determination. That individual shall be disqualified for a period of 12 months for the first offense, 24 months for the second offense, and permanently for the third offense.

D. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 100-203 and CFR 235, P.L. 104-193, amended in accordance with P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 14:439 (July 1988), amended by the Department of Social Services, Office of Family Support, LR 20:1019 (September 1994), LR 23:449 (April 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subpart 3. Supplemental Nutrition Assistance Program (SNAP)**

### **Chapter 17. Administration**

#### **Subchapter A. General Provisions**

##### **§1701. Authority**

A. The Supplemental Nutrition Assistance Program (SNAP) is administered under the authority of applicable federal and state laws.

AUTHORITY NOTE: Promulgated in accordance with applicable Sections of 7 CFR and R.S. 36:474, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), amended LR 24:108 (January 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **Subchapter B. General Administrative Requirements**

##### **§1703. Supplemental Nutrition Assistance Program (SNAP) Manual**

A. Rules and regulations regarding the implementation of the Food and Nutrition Act of 2008 (P.L. 110-246) have been adopted effective January 1, 2010.

B. The Office of the State Register has determined that publication of these rules would be unduly cumbersome and exercised its privilege to omit them from the *Louisiana Register*, as per R.S. 49:954.1(C). The new Supplemental Nutrition Assistance Program (SNAP) Manual may be obtained from the Department of Children and Family Services, Post Office Box 94065, Baton Rouge, Louisiana 70804. Also, copies of the SNAP Manual are available for public inspection at each parish office and on the DCFS website at [www.dcf.louisiana.gov](http://www.dcf.louisiana.gov).

AUTHORITY NOTE: Promulgated in accordance with F.R. 43:47846 et seq. and R.S. 49:954.1(C), 7 CFR 271 et seq., P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 4:511 (December 1978), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

##### **§1709. Purchasing Prepared Meals**

A. Effective May 1, 1987 homeless Supplemental Nutrition Assistance Program (SNAP) recipients (including newly eligible residents of temporary shelters for the homeless) may use their SNAP benefits to purchase prepared meals served by an authorized public or nonprofit establishment that feeds homeless people.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 274, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1711. Disabled People in Group Living Arrangements**

A. All individuals residing in group living arrangements who meet the Food and Nutrition Act of 2008 definition of *disabled* (as defined in Section 3(r) of the Food and Nutrition Act) are eligible to receive SNAP benefits to purchase their prepared meals.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.2, 273.1(e)(1)(iii), 278.1(f), P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **Subchapter C. Disaster Supplemental Nutrition Assistance Program (DSNAP)**

#### **§1713. Emergency Food Assistance Program for Disaster Victims**

A. Under the authority of Food and Nutrition Act of 2008 and 7 CFR Part 280, the Department of Children and Family Services does hereby establish an Emergency Food Assistance Program for Victims of Disaster.

B. This program provides emergency Disaster Supplemental Nutrition Assistance Program (DSNAP) benefits to households in an area which has been included in a disaster declaration. The Secretary of the U.S. Department of Agriculture (USDA), or his designee, determines the areas to be included in such a declaration, the temporary eligibility standards, grant amounts, and duration of the program.

C. In order for a parish or community to be eligible for inclusion in a DSNAP declaration, the following criteria must be met.

1. Normal commercial channels for food distribution were disrupted by the disaster.

2. Normal food distribution channels were restored.

3. The normal, ongoing Supplemental Nutrition Assistance Program is unable to expeditiously handle the volume of households affected by the disaster.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 280 and Section 5(h)(1) of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:213 (February 1993), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **Chapter 19. Certification of Eligible Households**

#### **Subchapter B. Application Processing**

#### **§1911. Households Eligible for Expedited Service**

A. Expedited service is defined as the providing of Supplemental Nutrition Assistance Program (SNAP) benefits no later than seven calendar days from the application date.

B. Households entitled to receive benefits under the SNAP Program's expedited service procedure are defined as follows:

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 52:36390 et seq., 7 CFR 273.2, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10

(January 1982), amended LR 14:150 (March 1988), amended by the Department of Social Services, Office of Family Support, LR 23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1913. Determination of Eligibility of Migrant or Seasonal Farmworkers**

A. Two provisions of the Drought Relief Act changed SNAP's procedures pertaining to the determination of eligibility and benefit levels for migrant or seasonal farmworkers. This is effective for applications received as of September 1, 1988 or allotments issued for the month of September, 1988.

1. Proration of Initial Month's Benefits. The first provision affects the proration of benefits after a break in participation in SNAP. This provision requires that migrant and seasonal farmworkers receive the full allotment for a month of application when the household has participated in the program within 30 days prior to the date of application. Thus, unless the household's break in participation exceeds 30 days, the migrant or seasonal farm worker household is eligible for a full month's allotment, rather than a prorated allotment, in the month of application.

A.2. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 14:871 (December 1988), amended by the Department of Social Services, Office of Family Support, LR 24:1782 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1915. Homeless SNAP Household**

A. The definition of "homeless SNAP household" is being replaced by the definition of a "homeless individual."

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., F.R. 52:36390 et seq., 7 CFR 273.2, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, amended LR 13:437 (August 1987), LR 14:87 (February 1988), amended by the Department of Social Services, Office of Family Support LR 23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1917. Homeless Meal Provider**

A. A *homeless meal provider* is a public or private nonprofit establishment, (e.g., soup kitchen, temporary shelter) approved by the department, that feeds homeless SNAP households. To be eligible to accept SNAP benefits, a meal provider must also be authorized by Food and Nutrition Services (FNS) after the department approves it.

B. ...

C. Only those SNAP households determined to be homeless shall be permitted to use SNAP benefits to purchase prepared meals served by authorized homeless meal providers. To ensure that the use of SNAP benefits for prepared meals is restricted to homeless persons, homeless meal providers shall establish that person's right to use SNAP benefits to purchase meals.

D. Applicant meal providers must apply for approval at the departmental office in their parish. An approval review at the provider's establishment will be conducted by the

regional agency representative. After approval has been granted by the department, the provider must then make application to an FNS field office to receive authorization to accept SNAP benefits.

E. Homeless meal providers may accept SNAP benefits as authorized retail redemption points after authorization from the department and FNS. The provider will receive settlement from the Federal Treasury as an electronic deposit directly to the provider's account at a financial institution. Homeless meal providers that redeem SNAP benefits in excess of \$100 per month will be provided equipment that will allow acceptance, redemption and settlement of program funds electronically. Others may participate by using manual vouchers.

F. The use of SNAP benefits to purchase meals from homeless meal providers is voluntary on the part of SNAP recipients. SNAP recipients must continue to be given the option of using cash if payment for a meal is required. In addition, if others have the option of eating free or making a monetary donation, homeless SNAP recipients must be given the same option (eat free, or donate money or SNAP benefits). The amount requested from homeless SNAP recipients using SNAP benefits to purchase meals may not exceed the average cost to the homeless meal provider of the food contained in a meal served to the patrons of the meal provider. If a homeless recipient voluntarily pays more than the average cost of food contained in a meal served, such payment may be accepted by the meal provider.

G. Homeless meal providers will not be permitted to serve as "authorized representative" for homeless SNAP households.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), amended by the Department of Social Services, Office of Family Support, LR 24:1782 (September 1998), LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1919. Certification of Information**

A. Effective August 1, 1986, one adult member in all applicant households must certify in writing under penalty of perjury, the truth of the information contained in the application for the household's allotment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953(B), 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:768 (November 1986), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1921. SSI and Supplemental Nutrition Assistance Program (SNAP) Application by Residents of Public Institutions**

A. Effective May 1, 1989 residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383) shall be permitted to apply for SNAP benefits at the same time they apply for SSI.

B. When a resident of an institution is jointly applying for SSI and SNAP prior to leaving the institution, the filing date of the application to be recorded by the department on the application is the date of release of the applicant from the institution.

C. The department shall make an eligibility determination and issue SNAP benefits to a resident of a public institution who applies jointly for SSI and SNAP within 30 days (or five days if expedited processing is appropriate) following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for SNAP and SSI prior to release shall also begin on the date of the applicant's release from the institution. SSA shall notify the department of the date of release of the applicant from the institution.

D. If, for any reason, the department is not notified on a timely basis of the applicant's release date, the department shall restore benefits to such applicant back to the date of release.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:4249 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:497 (June 1989), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1923. Verification**

A. Effective April 1, 1987, in addition to federally required verification, the department may mandate verification of any other factor which affects household eligibility or allotment level, including household size.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1927. Disclosure of Information**

A. Effective February 1, 1985, use or disclosure of information obtained from SNAP applicant households, exclusively for SNAP, shall be restricted to the following persons:

1. persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act or regulations, other federal assistance programs, or federally assisted state programs which provide assistance, on a means-tested basis, to low income individuals;

2. ...

3. local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food and Nutrition Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 49:48677 et seq., 7 CFR 273.2, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security LR 11:349 (April 1985), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter D. Citizenship and Alien Status**

### **§1931. Qualified Aliens**

A. - A.10. ...

11. An Iraqi or Afghan immigrant who has been granted Special Immigrant Visa (SIV) status.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33, P.L. 105-185, and P.L. 106-386.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 25:710 (April 1999), LR 28:1600 (July 2002), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§1932. Time Limitations for Certain Aliens**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 28:1600 (July 2002), LR 29:606 (April 2003), LR 30:493 (March 2004), repealed by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§1934. Alien Eligibility Criteria**

A. The following qualified aliens are eligible for benefits:

1. refugees admitted under §207 of the Immigration and Nationality Act (INA);

2. asylees admitted under §208 of the INA; and

3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date [April 1, 1997] of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of Division C of P.L. 104-208);

4. *Cuban* and *Haitian* entrants as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as contained in §101(e) of P.L. 100-202 and amended by the 9th provision under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, P.L. 100-461, as amended;

6. an alien who is the victim of a severe form of trafficking in persons;

7. veterans who have met the minimum active-duty service requirements of Section 5303 A(d) of Title 38, United States Code, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, United States Code, and unmarried dependent children;

8. active-duty personnel (other than active duty for training) and their spouses, or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, United States Code, and unmarried dependent children;

9. aliens who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act or can be credited with such qualifying quarters;

10. effective October 1, 2002, individuals who are lawfully residing in the United States and are receiving

benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997;

11. individuals who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older;

12. effective October 1, 2003, individuals who are lawfully residing in the United States and are under 18 years of age;

13. effective April 1, 2003, individuals who have been lawful, permanent residents or otherwise qualified aliens for at least five years beginning on the date the immigrant was designated as a qualified alien by the Immigration and Naturalization Service;

14. an Iraqi or Afghan immigrant who has been granted Special Immigrant VISA (SIV) status.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, P.L. 107-171, and P.L. 111-118.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter E. Students**

### **§1935. Student Provisions (Effective March 1, 2006)**

A. An individual enrolled at least half-time (as defined by the institution) in an institution of higher education is considered a student. A student is ineligible to receive SNAP benefits unless the individual meets at least one of the following conditions:

1. - 9.b....

c. a SNAP employment and training program (LaJET);

A.9.d. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.5., P.L. 107-171, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 24:1783 (September 1998), LR 32:1616 (September 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter G. Work Requirements**

### **§1938. Work Registration Requirements**

A. - A.1.f. ...

2. If it is determined that an individual other than the head of the household has violated the work requirements without good cause, that individual shall be ineligible to participate in SNAP as follows:

A.2.a. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§1940. Work Participation Requirements for Able-Bodied Adults Without Dependents**

**[Effective 10/1/97 by ER]**

A. Individuals are ineligible to continue to receive SNAP benefits if, during the preceding 36-month period they received SNAP benefits for at least three months (consecutive or otherwise) while that individual did not either:

1. work an average of 20 hours per week;

A.2. - B.2. ...

3. a parent of a household member under age 18, even if the household member who is under age 18 does not receive SNAP benefits;

4. residing in a household where a household member is under age 18, even if the household member who is under age 18 does not receive SNAP benefits;

5. - 6. ...

C. - C.1.b. ...

c. participates in and complies with a workfare program (under Section 20 of the Food and Nutrition Act of 2008 or a comparable state or local program) for 80 hours or more.

C.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, 7 CFR 273.24, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:81 (January 1997), amended LR 34:885 (May 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1941. Work Requirements of the SNAP Household**

A. - B. ...

C. Employment and Training (E and T) Programs

1. The department submitted an Employment and Training Program Plan to the United States Department of Agriculture, Food and Nutrition Service (FNS) Dallas Regional Office and the FNS Office of Alexandria, Virginia. A copy of the plan is available for public inspection at the Supplemental Nutrition Assistance Program Office, 627 North Fourth Street, Baton Rouge, Louisiana 70802.

C.2 - C.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.7 (c) (2), P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:394 (July 1987), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:96 (February 1989), amended by the Department of Social Services, Office of Family Support, LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 23:81 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **Subchapter H. Resource Eligibility Standards**

##### **§1945. Resource Test**

A. Effective June 1, 1983, households in which all members receive Family Independence Temporary Assistance (FITAP) and whose income meets the gross income eligibility standards will be considered to have satisfied SNAP's resource test. However, the households must continue to meet all other SNAP eligibility standards, including the net income standards.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55907 et seq., 7 CFR 273.8, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

##### **§1949. Exclusions from Resources**

A. All resources other than those listed in Section 1947 of this Title shall be excluded from countable resources.

B. All of the resources of individuals who are included in a household that is categorically eligible are excluded.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:657 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:187 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003), LR 32:646 (April 2006), LR 34:2679 (December 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **Subchapter I. Income and Deductions**

##### **§1951. Strikers**

A. For SNAP purposes, a striker is defined as anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee engaged in a lockout, however, is not deemed to be a striker.

B. ...

C. Effective March 1, 1983, households with striking members shall be ineligible to participate in SNAP unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. However, such a household shall not receive an increased allotment as the result of a decrease in the income of the striking member(s) of the household. Eligibility shall be determined by considering the day prior to the strike as if it were the day of application and assume the strike did not occur. Eligibility at time of application shall be determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of nonstriking members during the month of application. To determine benefits, deduction shall be calculated for the month of application as for any other household. Whether the striker's pre-striker earnings are used or his current income is used, the earnings deduction shall be allowed if appropriate.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:52328 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:62 (February 1983), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

##### **§1953. Income Eligibility Standards**

A. The income eligibility standards for SNAP shall be as follows:

1. ...

2. Net Income. For households which contain a member who is 60 years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, or disability and blindness payments under Titles I, II, X, XIV of the Social Security Act, the net income eligibility standards for SNAP shall be as follows: The income eligibility standards for the contiguous 48 states and the District of Columbia, Guam, Puerto Rico and the Virgin Islands shall be the Office of Management and Budget's (OMB) nonfarm income poverty guideline for the 48 states and the District of Columbia.

3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1961. Adjustment of Standard Deduction**

A. Effective October 1, 2002, the standard deduction shall be set at 8.31 percent of the poverty level based on household size of up to six persons. The standard deduction will be adjusted in accordance with directives from the United States Department of Agriculture, Food and Nutrition Service.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1967. Setting the Standard Utility Allowance and Basic Utility Allowance**

A. Effective October 1, 1985, and each October 1 thereafter, the annualized standard utility allowance in the Supplemental Nutrition Assistance Program shall be adjusted to reflect changes in the cost of utilities.

B. The department will conduct an annual statewide survey of utility companies to determine the average monthly cost of utilities. This methodology is subject to approval by the United States Department of Agriculture Food and Nutrition Service. The standard allowance developed shall also be submitted to USDA FNS for approval.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9(d)(6), P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:864 (September 1985), repromulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1969. Standard Telephone Allowance**

A. Effective May 1, 2002, all SNAP households whose only utility cost is a telephone shall use a mandatory standard telephone allowance of \$24. Each October 1 thereafter, the mandatory standard telephone allowance shall be adjusted to reflect changes in the cost of basic telephone services.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9(d)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:1079 (November 1985), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1975. Earned Income Tax Credits (EITC)**

A. Advance payment of EITC will not be counted as income for SNAP purposes. However, the amount will be

counted toward the household's resources just as EITC payments made as tax refunds are.

B. Exclude EITC as resources for 12 months from receipt if the recipient is participating in SNAP when the EITC is received and continuously participates for the 12 months following receipt.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 and P.L. 103-66, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:393 (May 1989), amended by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1977. Cash Charitable Contributions**

A. Effective immediately, cash charitable contributions based on need, which are received from private nonprofit charitable organizations, not in excess of \$300 total per federal fiscal year quarter, shall be excluded as SNAP household income.

B. ...

C. Affected households which were denied benefits because the household's eligibility or benefit calculation during the second federal fiscal year quarter of 1988 (but not prior to February 1, 1988) did not include this income exclusion shall be entitled to restored benefits, if otherwise eligible, at the time of recertification, whenever the household requests a review of its case, or when the department otherwise becomes aware that a review of a particular case is needed. Restored benefits shall be paid to February 1, 1988, or the date of the SNAP application, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with F.R. 53:22291 et seq., 7 CFR 273.9, P.L. 11-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Eligibility Determinations, LR 14:708 (October 1988), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§1978. Income Decreased for Failure to Comply With Another Program**

A. Effective November 27, 1996, an increase in SNAP benefits is prohibited when a household's benefit from another federal, state or local means-tested assistance program is decreased (reduced, suspended or terminated) due to failure to comply with a requirement of the program that imposed the benefit decrease.

B. The procedures for determining SNAP benefits when there is such a decrease in income are as follows.

1. When a recipient's benefits under a federal, state, or local means-tested program (such as but not limited to SSI or FITAP) is decreased due to noncompliance, SNAP identifies that portion of the decrease which is a penalty.

2. The department calculates the SNAP benefits using the benefit amount which would be issued by that program if a penalty had not decreased the recipient's benefit.

AUTHORITY NOTE: Promulgated in accordance with F.R. 61:19155 et seq., 7 CFR 272.1, 273.9 and 273.11, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:1141 (November 1996), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## §1980. Income Exclusions

A. In addition to those income exclusions previously adopted and codified in Chapter 19, Certification of Eligible Households, the following income types will be excluded from countable income for the Supplemental Nutrition Assistance Program:

1. - 42. ...

43. any payments other than wages received as a result of the Mississippi Canyon 252 Well Incident in the Gulf of Mexico on April 20, 2010.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171, P.L. 108-447, CFR 273.2. (j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended LR 23:82 (January 1997), LR 29:607 (April 2003), LR 31:2956 (November 2005), LR 32:1616 (September 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## §1981. Child Support Deduction

A. Legally obligated child support payments to, or for, an individual living outside of the household must be included in the deductions from the total monthly income when a budget for SNAP eligibility is determined. Households that fail or refuse to obtain necessary verification of their legal obligation or of their child support payments will have their eligibility and benefit level determined without consideration of a child support deduction.

AUTHORITY NOTE: Promulgated in accordance with F.R. 59:63265 et seq., 7 CFR 271, 273, 275, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 21:958 (September 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## §1983. Income Deductions and Resource Limits

A. In determining eligibility and benefit levels, the household is allowed deductions for certain costs.

1. ...

2. For fiscal year 2002 and each subsequent fiscal year, the maximum shelter deduction will be computed based on the amount for the preceding fiscal year, adjusted to reflect changes in the Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding November 30.

3. - 3.a. ...

B. The resource limit for a household is \$2,000, and effective October 1, 2002, the resource limit for a household that includes at least one elderly or disabled member is \$3,000 for households and individuals who are not categorically eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171, Act 58, 2003 Reg. Session, P.L. 108-447, CFR 273.2. (j), P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:423 (July 1986), amended LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:188 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## Subchapter J. Determining Household Eligibility and Benefit Levels

### §1985. Determining Eligibility

A. Effective March 1, 1983, the Supplemental Nutrition Assistance Program's State Manual has been revised to reflect these mandated changes.

1. - 3. ...

4. Households participating or applying for participation in SNAP shall provide the agency with the Social Security Number (SSN) of each household member, or apply for one through the agency before certification as a condition of eligibility. The member that has applied for an SSN shall be allowed to participate for 30 days from the first day of the first full month of participation while awaiting receipt of the SSN. If the household member(s) can show good cause why an SSN has not been obtained in a timely manner, they shall be allowed to participate for an additional 30 days. In determining if good cause exists for failure to comply with this requirement, the department shall consider information from the household member, the Social Security Administration, and its own information. Documentary evidence or collateral information that the household has applied for the number or made every effort to supply SSA with the necessary information shall be considered good cause for not complying with this requirement.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:53309 et seq., 7 CFR 271, 272, 273.10, 274, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### §1987. Categorical Eligibility for Certain Recipients

A. Households Considered Categorically Eligible

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Program, and households in which all members are recipients of SSI, shall be considered categorically eligible for SNAP.

2. - 4.b....

c. any member of the household is ineligible because of a drug related felony.

5. The following persons shall not be considered a member of a household when determining categorical eligibility:

a. an ineligible alien;

b. an ineligible student;

c. an institutionalized person;

d. an individual who is disqualified for failure to comply with the work registration requirements;

e. an individual who is disqualified for failure to provide or apply for a social security number;

f. an individual who is on strike.

A.6. - 7. ...

8. Categorically eligible households must meet all SNAP eligibility factors except as outlined above.

9. Changes reported by categorically-eligible SNAP households shall be handled according to established procedures except in the areas of resources or other categorical eligibility factors.

10. ...



## B. Application Processing

1. Households in which all members are applying for public assistance shall continue to be processed according to joint processing procedures. Until a determination is made on the public assistance application, the household's SNAP eligibility and benefit level shall be based on SNAP eligibility criteria. However, the local office shall postpone denying a potentially categorically-eligible household until the thirtieth day in case the household is determined eligible to receive public assistance benefits.

2. - 4. ...

5. If eligibility for public assistance is determined within the 30-day SNAP processing time, benefits shall be provided back to the date of application. If eligibility for public assistance is determined after the SNAP application is denied, benefits for the initial month shall be prorated from the effective date of the public assistance certification or the date of the SNAP application, whichever is later.

C. Certified households which become categorically eligible due to receipt of SSI benefits shall be eligible for the medical and uncapped shelter deductions from the beginning of the period for which the SSI benefits are authorized or the date of the SNAP application, whichever is later. These additional benefits shall be provided through restoration.

D. For SNAP purposes, Refugee Cash Assistance (RCA) benefits are not considered public assistance and, therefore, an RCA household is not categorically eligible.

E. Households considered broad-based categorically eligible for Supplemental Nutrition Assistance Program (SNAP) benefits are households who receive a non-cash TANF/MOE funded benefit or service.

1. A household shall not be considered broad-based categorically eligible if:

- a. any member of that household is disqualified for an intentional program violation;
- b. the household is disqualified for failure to comply with the work registration requirements;
- c. any member of the household is ineligible because of a drug related felony.

2. The following persons shall not be considered a member of a household when determining broad-based categorical eligibility:

- a. an ineligible alien;
- b. an ineligible student;
- c. an institutionalized person;
- d. an individual who is disqualified for failure to comply with the work registration requirements;
- e. an individual who is disqualified for failure to provide or apply for a social security number;
- f. an individual who is on strike.

3. Households which are broad-based categorically eligible are considered to have met the resource eligibility factor without additional verification.

4. Broad-based categorically eligible households must meet all Supplemental Nutrition Assistance Program eligibility factors except as outlined above.

5. Benefits for broad-based categorically eligible households shall be based on net income as for any other household.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274, F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2, (j), P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### §1988. Eligibility Disqualification of Certain Recipients

A. ...

B. Effective May 7, 1998 an individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act, 21 U.S.C. 802[6]) shall be disqualified from receiving SNAP benefits for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall apply to an offense which occurred after August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:233.1, P.L.105-33, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 23:590 (May 1997), LR 23:1710 (December 1997), LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### §1991. Initial Month's Benefits

A. *Effective 10/1/96 by ER* Initial month means either the first month for which an allotment is issued to a household, or the first month for which an allotment is issued to a household following any period during which the household was not certified for participation in SNAP.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.10, P.L. 103-66, P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), LR 23:83 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### §1993. Replacement of Benefits

A. Replacement issuances shall be provided only if a household timely reports a loss (food purchased with SNAP benefits has been destroyed in a household misfortune) and executes the proper affidavit. Replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:6989 et seq., 7 CFR 273.10, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), amended by the Department of Social Services, Office of Family Support, LR 19:783 (June 1993), LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter K. Action on Households with Special Circumstances**

### **§1995. Sponsored Aliens**

A. The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, the alien parent of a battered child, or effective October 1, 2003, any alien under 18 years of age, or an indigent alien that the state agency has determined is unable to obtain food and shelter, taking into account the alien's own income plus, any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s).

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P.L. 104-208, P.L. 105-33, and P.L. 107-171, and 7CFR 273.4 (c)(3)(iv).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:355 (February 1998), LR 30:493 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§1997. Drug and Alcohol Treatment Centers**

A. Residents of publicly operated community mental health centers which provide the same type of residential programs for alcoholic or drug rehabilitation as private, nonprofit institutions will be considered individual households and, if eligible, may participate in SNAP.

B. Drug addicts or alcoholics and their children who are residents in an approved public or private, drug or alcohol treatment center program may participate in SNAP.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:6511 et seq., 7 CFR 273.11, P.L. 103-66, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:367 (June 1986), amended by the Department of Social Services, Office of Family Support, LR 21:189 (February 1995), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter L. Reporting Changes**

### **§1998. Reporting Requirements**

A. Effective November 2009, all SNAP households are included in simplified reporting with the exception of households participating in the Louisiana Combined Application Project (LaCAP).

B. Simplified reporting households are required to report only:

1. changes in the household's gross monthly income which result in the household's income exceeding 130 percent of the monthly poverty income guideline for the household size; and

2. changes in work hours of able-bodied adults without dependents (ABAWDs) who are subject to the time limit set forth in Section 1940 if the change results in the ABAWD working an average of less than 20 hours per week.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1486 (July 2004), amended LR 35:689 (April 2009), amended by the Department of

Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter M. Notice of Adverse Action**

### **§1999. Reduction or Termination of Benefits**

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the household at the time of action in the following situations.

1. The agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or ended because of the disqualification.

2. Benefits are reduced or terminated at the end of the certification period when the client timely reapplies.

3. The client has been certified in another state and that fact has been established.

4. The client signs a statement requesting closure or reduction in benefits and waives the right to advance notice.

5. Benefits are reduced or terminated effective the month following the simplified report month as a result of changes reported through the simplified reporting process.

6. The agency receives a written report signed by the head of the household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility.

7. Mass changes.

8. Based on reliable information, the agency determines that the household has moved or will be moving out of the state prior to the next monthly issuance.

9. The household applied for cash assistance and SNAP at the same time and has been getting SNAP benefits while waiting for approval of the cash assistance grant.

10. The client was a certified resident in a drug or alcohol treatment center or a group living arrangement which loses its state certification or FNS disqualifies it as a retailer.

11. A household certified under expedited processing rules provides postponed verification which reduces or terminates benefits.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 7 CFR 273.12(a)(1)(vii), P.L. 110-246

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 32: 2270 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter N. Recertification**

### **§2003. Recertification of Supplemental Security Income Households**

A. Supplemental security income households which have received a SNAP notice of expiration shall be entitled to make a timely application for SNAP recertification at the SSA office.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended by the Department of Children and

Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **Subchapter P. Recovery of Over-Issued SNAP Benefits**

#### **§2005. Claims Against Households**

A. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 48:6837 et seq., P.L.97-35,97-253,101-624 §1746, and 102-237 §911, 7 CFR 272,273, 276 and 277, P.L.103-66, P.L.104-193, P.L. 104-134, 7CFR 3 Subpart B., P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:899 (August 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 23:1710 (December 1997), LR 24:2326 (December 1998), LR 27:1017 (July 2001), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

#### **§2007. Penalties**

A. The Supplemental Nutrition Assistance Program (SNAP) shall maintain provisions relating to the disqualification penalties for intentional program violations. These provisions are aimed at deterring SNAP abuse and improving recovery of overpayments.

B. The basis for disqualification includes the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any state SNAP statute, and the use of SNAP benefits in certain illegal purchases. The program will not increase the benefits to the household of a disqualified person because of the disqualification.

1. ...

2. Individuals will be disqualified for two years for a first finding by a court that the individual used or received SNAP benefits in a transaction involving the sale of a controlled substance, and permanently for a second such finding. Permanent disqualification will also result for the first finding by a court that an individual used or received SNAP benefits in a transaction involving the sale of firearms, ammunition or explosives with SNAP benefits.

3. An individual convicted of trafficking SNAP benefits of \$500 or more shall be permanently disqualified.

4. ...

C. A loss of benefits penalty shall be imposed on those SNAP recipients who fail to report earned income in a timely manner. When determining the amount of benefits the household should have received, the department shall not apply the 20 percent earned income deduction to the income of the household which did not timely report. By doing this, the household that benefited from the failure to timely report is penalized since the amount it has to repay in overissuance will be increased. This provision shall be applied to allotments issued for October 1996 and all allotments issued for subsequent months.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B, and FR 65:41752 et seq., P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 14:150 (March 1988), amended by the Department of Social Services, Office of Family Support, LR 23:84 (January 1997), LR 27:1017 (July 2001), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **Subchapter R. Simplified Reporting**

#### **§2013. Simplified Reporting**

A. Effective November 2009, all SNAP households are included in simplified reporting with the exception of households participating in the Louisiana Combined Application Project (LaCAP).

B. Households subject to simplified reporting will be required to report only:

1. - 2. ...

C. Households included in Simplified Reporting will be assigned a certification period of 12 months.

D. All households in simplified reporting are required to:

1. timely provide a completed simplified report form and all necessary verification; and

2. report current household circumstances.

E. Failure to provide a complete Simplified Report form and verification will result in case closure.

F. ...

G. Any change in benefits as a result of simplified reporting will be effective the month following the month in which the Simplified Report was required.

H. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:867 (June 2001), amended LR 28:103 (January 2002), LR 29:607 (April 2003), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **Chapter 21. Louisiana Combined Application Project (LaCAP)**

#### **Subchapter A. Household Concept**

##### **§2103. Household Definition**

A. - A.2. ...

3. is not institutionalized, or otherwise ineligible for SNAP due to immigration status, an Intentional Program Violation, or drug conviction; and

4. lives alone or declares to purchase and prepare food separately from others in a shared living situation.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

##### **§2105. Application Process**

A. The department shall make an eligibility determination and issue SNAP benefits within 30 days following the date of application for LaCAP.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2(g), 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

##### **§2107. Benefits**

A. Participants will receive one of four standard amounts of SNAP benefits based on the household's total combined shelter (housing and utilities) costs.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§2113. Household Options**

A. Households may choose to opt out of LaCAP at any time and participate in regular SNAP, if otherwise eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2272 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§2117. Recovery of Overissued Benefits**

A. Establishment of claims, penalties, and collection methods for LaCAP households shall be handled in accordance with procedures outlined in Chapter 19, Subchapter P, Recovery of Over-Issued Supplemental Nutrition Assistance Program Benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.B., 7 CFR 273.18, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2272 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subpart 12. Child Care Assistance Program**

### **Chapter 51. Child Care Assistance Program**

#### **Subchapter A. Administration, Conditions of Eligibility, and Funding**

### **§5102. Definitions**

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*Household Designee (HD)*—an adult who is designated (in writing) by the CCAP Head of Household, other responsible household member, or authorized representative to drop off and/or pick up the child or children from an authorized CCAP provider. Each household designee may be finger imaged for identity purposes. In the case of an in-home provider, a household designee is the person to whom the provider may release the child or children when the provider leaves the home.

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AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:1464 (August 2006), LR 36:845 (April 2010), LR 36:1278 (June 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§5104. Reporting Requirements Effective February 1, 2004**

A. A low income child care household that is not included in a Supplemental Nutrition Assistance Program Simplified Reporting household shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned

income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A low income child care household that is included in a SNAP simplified reporting household is subject to the simplified reporting requirements in accordance with LAC 67:III.2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:845 (April 2010), LR 36:1278 (June 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

### **§5106. Ineligible Payments**

A. All ineligible benefits are subject to action to recover such benefits.

B. When a participant is suspected of Intentional Program Violation (IPV), appropriate referral and forms shall be submitted to the Fraud and Recovery Section. The Fraud and Recovery Section may then:

1. refer the case for prosecution; or
2. refer the case to the Appeals Bureau for a

Disqualification Hearing if the participant does not sign the Waiver of Right to an Administrative Hearing and the facts of the case do not warrant civil or criminal prosecution through the appropriate court systems; or the case was previously referred for prosecution and was declined by the appropriate legal authority; or the case was previously referred for prosecution and no action was taken within a reasonable period of time and the referral was formally withdrawn by Fraud and Recovery.

C. If IPV is established, Fraud and Recovery will send a notice to the person to be disqualified and a copy of the notice to the parish office. The parish office will take action to disqualify for the appropriate situations:

1. 12 months for the first violation;
2. 24 months for the second violation; and
3. permanently for the third violation.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## **Subchapter B. Child Care Providers**

### **§5107. Child Care Providers**

A. - B.4. ...

C. An FCDCH provider must be registered and active in the CCAP Provider Directory before payments can be made to that provider.

1. To be eligible for participation, in CCAP, an FCDCH provider must meet registration requirements as provided in R.S. 46:1441 et seq., complete and sign an FCDCH provider agreement, complete a CCAP application

for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements, including:

C.1.a. - E.6. ...

F. Under no circumstance can the following be an eligible CCAP provider:

F.1. - G.1.a. ...

b. an FCDCH provider fails to pass inspection by the Fire Marshal;

c. - f. ...

g. any action which results in disqualification as described in LAC 67: III. Section 5113.

1.h. - 2....

H.1. Quality incentive bonuses are available to:

a. effective May 1, 2004, eligible CCAP providers who provide special care for children with special needs. This special needs care includes but it is not limited to specialized facilities/equipment, lower staff ratio, and specially trained staff. The amount of these Special Care Needs Incentive payments will be in accordance with §5109.B.1.b and §5109.B.2.b;

b. eligible child care centers that employ a teacher who attends specified infant/toddler training on a first-come, first-serve basis, on a limited basis due to one-time American Recovery and Reinvestment ACT (ARRA) funding. A maximum of 10 centers per region are eligible to receive a \$2000 grant for infant/toddler materials and equipment. However, if all applications have been received and one region has less than 10 qualified or interested centers and another region has additional qualified centers that wish to participate, resources may be moved to allow full participation and benefit from the ARRA funding. The center must meet requirements and participation targets to receive the grant. Centers must apply and meet the requirements to be eligible. Eligibility will be determined by the Division of Child Care and Early Childhood Education;

c. eligible teachers who work for an eligible center as described in LAC 67: 5107.H.1.b. and elect to attend this specialized infant/toddler training. Up to four infant/toddler teachers employed by the eligible center may attend. Teachers can receive wage supplements up to \$1500 for participation but must meet requirements and participation targets to receive wage supplements. Teachers must apply and meet the requirements to be eligible. Eligibility will be determined by the Division of Child Care and Early Childhood Education.

H.2. - I.3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:845 (April 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR:36

## §5111. Ineligible Payments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000), amended LR 30:496 (March 2004), LR 31:2266 (September 2005), repealed by Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

## §5113. Disqualification Periods for CCAP Providers

A. A child care provider shall be disqualified from receiving CCAP payments if the agency determines that certain acts or violations have been committed by that provider. CCAP disqualifications shall apply as follows.

1. A criminal background check (CBC) shows that a provider has been convicted of or pled no contest to any defense in another jurisdiction whose elements would constitute an enumerated offense under in R.S.15:587.1(C) if committed within Louisiana, shall result in permanent disqualification. If a CBC shows that a person living in or working in an FCDCH or a person working in a Class A, Class E center, or child care center licensed by the Department of Defense (Class M) shows the person has been convicted of or pled no contest to any offense enumerated in R.S.15:587.1(C), or has been convicted or pled no contest to any offense in another jurisdiction whose elements would constitute an enumerated offense under R.S. 15:587.1(C) if committed within Louisiana, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class E, or Class M center. For purposes of this Section a conviction under La C.Cr.P. Arts 893 or 894, or equivalent provisions of another jurisdiction, shall constitute a conviction.

2. A Category 1 validated complaint of child abuse or neglect on the provider shall result in permanent disqualification. If the Category 1 validated complaint is for a person living in or working in an FCDCH or for a person working in a Class A, Class E, or Class M center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class E, or Class M center. The following types of validated complaints of child abuse or neglect are considered to be Category 1 complaints: bone fracture, factitious disorder by proxy/Munchausen by proxy syndrome, poisoning or noxious substance ingestion, suffocation, whiplash/shaken infant syndrome, HIV/AIDS and hepatitis, prostitution, sexual intercourse (vaginal or anal), failure to thrive (non-organic), central nervous system damage/brain damage/skull fracture, internal injury, subdural hematoma, torture, wounds, oral sex, sexual exploitation/pornography, sexually transmitted disease, malnutrition/starvation, death/abuse, death/neglect, perpetrators who have an adjudication of a child in need of care, perpetrators with a voluntary or involuntary Termination of Parental Rights (TPR) judgment, sexual enticement, simulated intercourse, abandonment, burns, eye injury, minor head/facial injuries, tying or confinement, passive abuse, exploitation, sexual manipulation or fondling, emotional maltreatment, bruises/cuts/welts/scratches, dislocations or sprains, human bites, mouth/dental trauma, medical neglect, drug/alcohol abuse, dependency, and lack of supervision as described in §5113A.4. These types of validated complaints of child abuse or neglect are defined by the department.

3. A Category 2 validated complaint of child abuse or neglect on the provider shall result in the disqualification periods described below. If the Category 2 validated complaint is for a person living in or working in an FCDCH or working in a Class A, Class E, or Class M center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class E, or Class M center, or until the disqualification period described below ends, whichever is sooner. The following types of validated complaints of child abuse or neglect are considered to be Category 2 complaints: inadequate clothing, inadequate food, inadequate shelter, and lack of supervision as described in §5113.A.4. These types of validated complaints of child abuse or neglect are defined by the department. The disqualification periods for Category 2 validated complaints are as follows:

- a. six months for first validated complaint;
- b. 12 months for second validated complaint;
- c. 24 months for third and subsequent validated complaints.

4. A validated complaint of child abuse or neglect due to lack of supervision shall be deemed by the agency as either a Category 1 or a Category 2 complaint, based on the severity of the complaint and the circumstances that existed at the time of the complaint.

5. An Intentional Program Violation (IPV) is any act by a CCAP provider that consists of intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding relevant facts. A provider who has committed an IPV will be subject to the following disqualification periods:

- a. 12 months for the first violation;
- b. 24 months for the second violation; and,
- c. permanently for the third violations

6. Non-fraudulent violations of the terms of the CCAP Provider Agreement, shall result in the following disqualification periods:

- a. three months for first violation;
- b. six months for second violation; and
- c. 12 months for third and subsequent violations.

**AUTHORITY NOTE:** Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 34:2208 (October 2008), amended LR 36:556 (March 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

**Subpart 13. Kinship Care Subsidy Program (KCSP)**  
**Chapter 53. Application, Eligibility, and Furnishing Assistance**

**Subchapter B. Conditions of Eligibility**

**§5329. Income**

A. - A.31. ...

32. any payments other than wages received as a result of the Mississippi Canyon Well Incident in the Gulf of Mexico on April 20, 2010.

B. - D. ...

**AUTHORITY NOTE:** Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2(j).

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958

(November 2005), LR 32:1617 (September 2006), LR 32:1913 (October 2006), repromulgated LR 32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

**§5347. Reporting Changes**

A. Effective February 1, 2004, a KCSP household that is not included in a SNAP Simplified Reporting household shall report any change that affects eligibility. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A KCSP household that is included in a Simplified Reporting household is subject to the simplified household reporting requirements in accordance with LAC 67:III.2013 and must report if the only child moves out of the home.

**AUTHORITY NOTE:** Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231 et seq., 7 CFR Part 273, 42 U.S.C., et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Family Support, LR 28:2565 (December 2002), amended LR 30:1487 (July 2004), LR 32:264 (February 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

**Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5501. Introduction to the TANF Initiatives**

A. The programs known collectively as the TANF Initiatives provide benefits in the form of services to needy families, defined as families who have earned income at or below 200 percent of the federal poverty level, or a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Supplemental Nutrition Assistance Program (SNAP) benefits, Child Care Assistance Program (CCAP) services, Title IV-E, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP) benefits, Supplemental Security Income (SSI), or free or reduced school lunch.

B. Not all TANF Initiatives require a family to be "needy" as defined above in order to receive services. There are initiatives that target children, parents, or caretaker relatives of minor children and require only that the person be in need of the services provided by the initiative.

C. The goals of the TANF Initiatives are:

1. to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
3. to prevent and reduce the incidence of out-of-wedlock pregnancies; and
4. to encourage the formation and maintenance of two-parent families.

**AUTHORITY NOTE:** Promulgated in accordance with 42 U.S.C. 601 et seq., P.L. 104-193.

**HISTORICAL NOTE:** Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This proposed Rule will have no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This proposed Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This proposed Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This proposed Rule will have no effect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? This proposed Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these programs are strictly an agency function.

#### **Small Business Statement**

The impact of the proposed rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

#### **Public Comments**

All interested persons may submit written comments through, September 27, 2010, to Sammy Guillory, Deputy Assistant Secretary, Department of Children and Family Services, Post Office Box 94065, Baton Rouge, LA 70804-9065.

#### **Public Hearing**

A public hearing on the proposed rule will be held on September 27, 2010, at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Secretary  
Ruth Johnson

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

**RULE TITLE: Child Care Assistance Program (CCAP), Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Supplemental Nutrition Assistance Program (SNAP)**

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

The cost to the State to implement this Rule that changes the Family Independence Temporary Assistance Program (FITAP), Child Care Assistance Program (CCAP) Kinship Care Subsidy Program (KCSP) and Supplemental Nutrition Assistance Program (SNAP) is the cost of publishing the rule.

The cost of publishing rulemaking is estimated to be \$1,000. This is a one-time cost that is routinely covered in the Agency's annual operating budget.

This Rule will result in an increase of benefits as a result of the implementation of broad-based categorical eligibility in the number of individuals receiving SNAP benefits by 1,152 households. Based on an average benefits amount of \$323 this would result in additional benefits paid of \$372,096 per year. SNAP benefits are 100% Federal funds and have no direct costs to the State.

There are no costs to Local Government Units as a result of this rule change.

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

Implementation of this rule will have no effect on State or Local Government Units revenue collections.

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

Implementation of this rule will have economic benefit to persons who would not otherwise be eligible for the Supplemental Nutrition Assistance Program (SNAP) as follows:

(1) Adds a broad-based categorical eligibility provision to provide immediate access to SNAP benefits to individuals and families affected by an oil spill.

(2) Alien eligibility criteria for the SNAP benefits have been expanded to include Iraqi and Afghani immigrants who have been granted Special Immigrant Visa (SIV) status.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule should have no impact on competition and employment.

Sammy Guillory  
Deputy Assistant Secretary  
1008#042

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

#### **Department of Economic Development Office of Business Development**

#### **Enterprise Zone Program (LAC 13:I.Chapter 7)**

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to repeal Section 705, and amend and reenact Sections 701 through 703 and Sections 707 through 749 of the Enterprise Zone Program as LAC 13:I.Chapter 7.

The proposed amendment makes numerous changes. The following are the most notable. The amendment provides for the implementation of 1.5 percent ITC added by Act 400 of 2007 Regular Session. The amendment provides that there is no longer a requirement for a business' statewide employment levels to increase. The amendment provides for extensions to required time periods for adding new jobs upon approval by the Board of Commerce and Industry (Board). The amendment establishes a fair playing field between in-state businesses and out-of-state businesses; and between businesses with simple legal structures and businesses with complex legal structures, regarding the minimum number of jobs that must be created by including employment nationwide of the business and its affiliates.

The amendment provides for the utilization of a four month median to establish employment baseline, as opposed to a "high" point immediately prior to the effective date of the contract. The amendment provides clear guidance on how jobs associated with the sale of a business are handled and requires that to be eligible, the business must be out of operation for at least 3 months, or LED must make a determination that jobs would have been lost to the state absent the sale. There are also numerous technical changes to provide for consistency of terminology throughout the rules.

The proposed Rule change is necessary because of Act 400 of the 2007 Regular Session and the Board of Commerce and Industry and the staff of DED have determined that the current rules are too vague and not specific enough in certain areas, and the administration of these rules has allowed some businesses to obtain benefits that are not legally authorized by the legislation. The specific areas of the rules the agency believes are too vague include those dealing with determining a baseline of employees from which to calculate the number of new jobs, the creation and maintenance of permanent new jobs, the treatment of jobs transferred from other locations operated by the business and affiliates of the business, and the treatment of employees acquired through the acquisition of an existing business. The agency believes that the manner in which it has addressed these issues in the proposed action, will bring the rules and the administration of the program into closer compliance with the legislation.

### **Title 13**

### **ECONOMIC DEVELOPMENT**

#### **Part I. Financial Incentive Programs**

#### **Chapter 7. Enterprise Zone Program**

#### **§701. Scope and Qualifications**

A. Intent of Program. The intent of the program is to stimulate employment for residents in depressed areas of the state that are designated as enterprise zones by providing tax incentives to a business hiring from these areas.

B. Description of Program. The Louisiana Enterprise Zone Program is a jobs program that gives tax incentives to a business hiring from certain specified targeted groups of individuals. Enterprise Zone Program incentives are in addition to other state-sponsored incentives such as the Industrial Tax Exemption Program and the Restoration Tax Abatement Program. Enterprise Zone and Quality Jobs Programs are mutually exclusive.

C. Incentives. The following incentives are available:

1. a one-time tax credit of \$2,500 for each net new job;

2. in lieu of the §701.C.1 tax credit, a one-time tax credit of \$5,000 for each net new job for the following businesses:

a. aviation and aerospace industries as defined in the NAICS industries 336411, 336412, 336413 or 332912;

b. the rubber manufacturing industry as defined in the NAICS industry 326211 (until June 30, 2012); or

c. auto parts manufacturers as defined in the NAICS industry group 3363 (until June 30, 2009);

3. in addition to the §701.C.1 and §701.C.2 tax credits, a one-time tax credit of \$2,500 for each recipient of Temporary Assistance for Needy Families (TANF) hired by a business. The TANF recipient must receive compensation

which will disqualify them from continued participation in TANF and must be employed for two years to generate the additional tax credit. An employer shall not obtain the jobs tax credit for more than 10 TANF employees in the first year of participation in the program;

4. rebates of sales and use taxes imposed by the state, and sales and use taxes imposed by its political subdivisions upon approval of the governing authority of the appropriate taxing political subdivision, on all eligible purchases during a specified project period of not more than 30 months:

a. sales and use taxes imposed by a political subdivision which are dedicated to the repayment of bonded indebtedness or dedicated to schools shall not be eligible for rebate;

b. a business seeking a local sales and use tax rebate must obtain an endorsement resolution specific to the project from each political subdivision levying the taxes to be rebated. The endorsement resolution must clearly state the intention to rebate sales and use taxes as allowable for the project. The endorsement resolution must be adopted prior to board approval of the application, or if the project cost is greater than one hundred million dollars, prior to the project ending date;

5. in lieu of the §701.C.4 rebates, a refundable investment tax credit equal to one and one-half percent of the amount of qualified expenditures for assets that are located at the project site and are placed in service during the project period.

D. The §701.C tax credits may be used to satisfy state income tax and franchise tax liabilities, and may be taken on the tax return for the year in which the credit was created, or it may be taken on the tax return for a future year. If the entire tax credit cannot be used in the year created, the remainder may be applied against state income tax and franchise tax liabilities for the succeeding 10 years from the year in which the credit was created or until the entire credit is used, whichever occurs first.

#### **E. Qualifications**

1.a To qualify for the Enterprise Zone Program, a business must create permanent full-time net new jobs that are at least equal to the lesser of:

i. five jobs, created within the first two years of the contract period; or

ii. the number of jobs equal to a minimum of ten percent of the employees employed throughout the United States by the business and its affiliates, a minimum of one, created within the first year of the contract period.

b. For good cause shown, the board may grant an extension of not more than two years to comply with the above job creation requirements.

2. For projects with advance notifications filed with Business Incentives Services prior to the effective date of the 2010 revision of these rules, qualification will be determined in accordance with prior policy and practice.

3. Residential developments, (including but not limited to the construction, selling, or leasing of single-family or multi-family dwellings, apartment buildings, condominiums, town houses, etc.), churches, and businesses with gaming on site (see LAC 13:I.Chapter 3, Gaming Ineligibility) are not eligible for enterprise zone benefits.



4. For a multi-tenant facility to be eligible for the benefits of this Chapter, the business must meet one of the following criteria:

- a. occupy a minimum of 33 percent of the total floor area of the building;
- b. tenants are businesses new to the state;
- c. tenants are Louisiana businesses increasing their number of locations within the state by placing a new location within this facility;
- d. tenants are relocating within Louisiana and will generate the minimum of new job credits over and above the total jobs at their previous location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:252 (March 1991), amended by Department of Economic Development, Office of Commerce and Industry, LR 22:446 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2298 (November 2003), LR 36:

### §703. Definitions

*Affiliate*—

1. any business entity that is:
  - a. controlled by the business;
  - b. a controlling owner of the business; or
  - c. controlled by an entity described in Subparagraph a or b.
2. *Control*, for purposes of this definition, means owning either directly or indirectly through control of or by another business entity:
  - a. a majority of the voting stock or other voting interest of such business entity or the business; or
  - b. stock or other interest whose value is a majority of the total value of such business entity or the business.
3. A controlled or controlling business entity will be deemed a “non-affiliate” (not an *affiliate*) if LED determines that neither the business nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.
4. A controlled or controlling business entity will be deemed an “unrelated affiliate” (not an *affiliate*) if LED determines that the business entity is not engaged in any line of business related to the project activities.

*Beginning of the Project*—

1. the first day on which project foundations are started or where foundations are unnecessary, the first day on which installation of the project facility begins or the first day that materials or equipment purchased for the project are received;
2. where there is no construction, installation, or purchase of materials or equipment, the first day on which a new hire is made in connection with the project; or
3. the beginning date reported on the application (which date must be on or after the date the advance notification was filed).

*Board*—the Board of Commerce and Industry.

*Business*—a legal entity applying for the Enterprise Zone Program that conducts any activity carried on for the production of income from selling goods or performing services. A business may be conducted in the form of either a for-profit or not-for-profit entity. A not-for-profit entity will be considered a business only if it provides goods or

services for a fee based upon the cost of providing those goods or services (for example, hospitals).

*Business Incentives Services*—the Business Incentive Services Division of the Office of Business Development of the department.

*Contract Effective Date*—the day that the advance notification and fee were received by Business Incentives Services or the beginning of the project shown on the application. The contract effective date cannot be earlier than the date the advance notification was received by Business Incentive Services unless a waiver of timely filing has been approved by the board.

*Department*—Louisiana Department of Economic Development.

*Department of Revenue*—Louisiana Department of Revenue.

*Domicile*—the place of a person’s principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent.

*Economic Development Zone*—

1. a contiguous geographic area with a visible boundary, owned or operated by a political subdivision or an entity created by a political subdivision for commercial or industrial development purposes, including but not limited to the following:
  - a. industrial park;
  - b. business park;
  - c. airport or air park;
  - d. research park;
  - e. research and development park;
  - f. downtown development district with taxing and bonding authority;
  - g. former federal facility (immediately prior owner and occupant must have been a federal governmental entity), excluding a single building or small grouping of buildings; or
  - h. port.

2. An Economic Development Zone must be designated as such by the political subdivision in which it is located, and approved by the board. The location of an Economic Development Zone once defined is permanent, and cannot be moved or relocated.

*Employment Baseline*—

1. the baseline from which net new jobs are determined, equal to:
  - a. the median number of full time employees and part time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the 12 months prior to the contract effective date) at the project site, during the payroll periods including the twelfth day of the month, in the last four months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months); or
  - b. the last annual average number of full time employees and part time employees certified under an

enterprise zone contract for the business that was in effect on the day prior to the contract effective date.

2. The baseline must be maintained in any year for which the business requests job tax credits.

3. For projects with advance notifications filed with Business Incentives Services prior to the effective date of the 2010 revision of these rules, employment baseline will be determined in accordance with prior policy and practice.

*Enterprise Zone*—a census block group which is economically distressed and in need of expansion of business and industry and the creation of jobs, and designated by the Board to be eligible for the benefits of this Chapter in accordance with R.S. 51:1784.

*Full Time Employee*—an employee who is reported on the business's quarterly report and is scheduled to work 35 hours per week.

*Headquarters*—the corporate domicile of the company, together with all executive and administrative jobs normally constituting a corporate headquarters, or the regional headquarters support services of the company, together with all executive and administrative jobs normally constituting a regional corporate headquarters.

*Hire Date*—the first day of work for which the business directly pays an employee.

*Lacking Basic Skills*—an employee who exhibits below a ninth grade level proficiency in reading or writing or math.

*Louisiana Workforce Commission*—formerly known as the Louisiana Department of Labor.

*Metropolitan Area*—the parish in which the project site is located.

*NAICS*—North American Industrial Classification System.

*Net New Job*—

1. a position of employment that is:
  - a. created on or after the contract effective date;
  - b. in addition to the number of jobs in the employment baseline;
  - c. based at the site of the enterprise zone project;
  - d. filled by a full time employee or part time employee; who is
  - e. a United States citizen domiciled in Louisiana, or who becomes domiciled in Louisiana within 60 days after hire date; and who is
  - f. reported on the business's quarterly report.

2. The number of net new jobs filled by full time employees shall be determined by averaging the monthly totals of full time employees over a minimum of seven months for the first and last year of the contract period, and over a 12 month period for all other years. The number of net new jobs filled by part time employees shall be determined by counting the number of employees qualifying as part time employees during the applicable period.

3. For purposes of determining qualification of the business for the Enterprise Zone Program under §701.E, net new jobs shall be limited to permanent full-time jobs that are in addition to the number of permanent full-time jobs included in the employment baseline.

4. Jobs in which employees perform essentially the same work at the same location both before and after the contract effective date are not net new jobs unless:

- a. there has been an arm's length transfer of ownership between unrelated companies (not affiliates); and

- b. either the location has been out of operation for at least three months, or the secretary determines that the jobs would have likely been lost to the state absent the transfer.

5.a Transferred jobs which are not net new jobs include:

- i. jobs transferred, or jobs associated with work or sales transferred to the project site from other Louisiana sites of the business (including affiliates), unless back-filled at the original site;

- ii. jobs transferred, or jobs associated with work or sales transferred, to the business from affiliates and unrelated affiliates on the project site, unless back-filled;

- iii. jobs transferred, or jobs associated with work or sales transferred, to the project site from other Louisiana sites as a result of the business (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation;

- b. jobs created for the project, but temporarily assigned to another site until the site is ready or for training or similar purposes, are not considered transferred jobs and may be considered net new jobs when re-assigned to the project site.

6. Lost jobs which must be deducted in determining net new jobs include:

- a. jobs lost due to closure of any site of the business (including affiliates) that:

- i. is located within the same metropolitan area; and

- ii. provides the same goods or services as the project site;

- b. jobs lost due to downsizing of any site of the business (including affiliates) that:

- i. is located within the same metropolitan area; and

- ii. provides the same goods or services as the project site;

- iii. the project site and the other site each sell their goods or services primarily into that metropolitan area; and

- iv. the downsizing was anticipated by the business at the time the Qualification Certification was filed;

- c. jobs lost due to closure or downsizing of any site of the business (including affiliates) that:

- i. is located in the state of Louisiana; and

- ii. provides the same goods or services;

- iii. primarily for the same market segment or customer base, as the project site; and

- iv. the closure or downsizing was anticipated by the business at the time the Qualification Certification was filed;

- d. jobs lost by the business (including affiliates) due to relocation outside Louisiana or downsizing of headquarters operations or headquarters support services of the business (including any intermediate or ultimate parent company), and the relocation or downsizing was anticipated by the business at the time the Qualification Certification was filed.

*Part Time Employee*—an employee who is reported on the business's quarterly report and works a minimum of 20 hours each week for at least 26 consecutive weeks during the taxable year.

*Permanent Job*—as established in the qualification certification (as of the time the qualification certification is filed and irrespective of subsequent modifications to the job), a job that has no anticipated end date falling within the period commencing 45 days prior to the contract effective date and ending five years after the contract effective date.

*Placed in Service*—the date indicated as *placed in service* on the business's federal tax return depreciation schedule.

*Political Subdivision*—in this Chapter, a state, parish, municipality or other political subdivisions, including and not limited to a law enforcement or other special district authorized by law to perform governmental functions.

*Project*—a construction, expansion, or other business venture and associated activities for which benefits are sought under the Enterprise Zone Program.

*Project Completion Report*—a report confirming the beginning of the project, the project ending date, and the benefits elected.

*Project Ending Date*—the date all construction and purchasing is completed and received for the project, completing the project.

*Project Period*—the time encompassed by the contract effective date and the project ending date.

*Project Site*—the contiguous physical location of a project.

*Qualified Expenditure*—amounts classified as capital expenditures for federal income tax purposes plus exclusions from capitalization provided for in Internal Revenue Code Section 263(a)(1)(A) through (L), minus the capitalized cost of land, capitalized leases of land, capitalized interest, capitalized costs of manufacturing machinery and equipment to the extent the capitalized manufacturing machinery and equipment costs are excluded from sales and use tax pursuant to R.S. 47:301(3), and the capitalized cost for the purchase of an existing building. When a taxpayer purchases an existing building and capital expenditures are used to rehabilitate the building, the costs of the rehabilitation only shall be considered qualified expenditures. Additionally, a taxpayer shall be allowed to increase their qualified expenditures to the extent a taxpayer's capitalized basis is properly reduced by claiming a federal credit.

*Quarterly Report*—the Quarterly Report of Wages Paid that a business files with the Louisiana Workforce Commission.

*Rural Enterprise Zone*—an enterprise zone located in a parish having a current U.S. Census population of 75,000 or less.

*Some Form of Public Assistance*—any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependent upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their hire date. Unemployment is not public assistance.

*State*—state of Louisiana

*Unemployable by Traditional Standards*—having no prior work history or job training, having a criminal record (excluding misdemeanors), having a history of being unable to retain employment after gaining it, or being physically challenged.

*Urban Enterprise Zone*—an enterprise zone located in a parish having a current U.S. Census population greater than 75,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2299 (November 2003), amended LR 36:

#### **§705. Endorsement Resolution**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003), repealed LR 36:

#### **§707. Items Eligible for Sales and Use Tax Rebate**

A. Materials that are permanently installed at the project site during the project period are eligible for sales and use tax rebates.

B. Materials that originate from a contractor or subcontractor's inventory and are permanently installed at the project site during the project period are eligible for sales and use tax rebates. In order for rebates to be issued on property withdrawn from inventory, the contractor or subcontractor must maintain sufficient records and provide sufficient information to enable the Department of Revenue to verify that Louisiana sales or use taxes were paid on the property for which rebate is claimed.

C. Machinery and equipment purchased for the project during the project period are eligible for sales and use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

D. Machinery and equipment transferred into Louisiana for the project during the project period are eligible for sales and use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

E. Software purchased, capitalized, and used by the business primarily at the project site during the project period is eligible for sales and use tax rebates.

F. Consumable items are not eligible for sales and use tax rebate. Ineligible items include but are not limited to: per diem, labor, service contracts, storage, freight, radios, laptop computers, utilities, permits and fees, office supplies, construction consumables, blades, drill bits, PVC sheeting, tape, gloves, dusk masks, and all leases and rentals.

G. Lease-purchases may be eligible for a sales and use tax rebate upon Department of Revenue's approval. The property acquired through lease-purchase must be used exclusively at the project site, must be owned by an entity named in the enterprise zone contract, and must be intended to remain at the project site for the expected useful life of the machinery and equipment. A copy of the lease-purchase agreement must be submitted with the claim for rebate request to Department of Revenue, Office Audit Division.

H. A lease of an improvement to immovable property may be eligible for sales and use tax rebate upon the following conditions:

1. the improvements were made with the specific intent to enter into a lease agreement for the use of the improvements by the business, that is, an agreement to lease the improvements must exist before construction begins;

2. at its inception the lease must meet one or more of the following four criteria:

a. the lease transfers ownership of the property to the lessee by the end of the lease term;

b. the lease contains a bargain purchase option;

c. the lease term must be a minimum of twenty years;

d. the present value of the minimum lease payments, excluding any portion of the payments representing costs such as insurance, maintenance, and taxes to be paid by the lessor, equals or exceeds 90 percent of the fair value of the leased property; and

3. rebates shall be paid to the lessee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1983), LR 11:96 (February 1985), amended by the Department of Economic Development, Office of Business Development, LR 17:255, (March 1991), LR 22:449 (June 1996), LR 29:2302 (November 2003), LR 36:

#### **§709. Targeted Employees for a Business in an Urban Enterprise Zone**

A. A business located in an urban enterprise zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident in an enterprise zone in the state;

2. receiving some form of public assistance within the six-month period prior to their hire date;

3. lacking basic skills; or

4. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003), LR 36:

#### **§711. Targeted Employees for a Business in a Rural Enterprise Zone**

A. A business located in a rural enterprise zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident of the same parish as the project site;

2. resident of an enterprise zone in the state;

3. receiving some form of public assistance within the six month period prior to their hire date;

4. lacking basic skills; or

5. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:254 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:448 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), LR 36:

#### **§713. Targeted Employees for a Business in an Economic Development Zone**

A. A business located in an economic development zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident of the same parish as the project site;

2. resident of an enterprise zone in the state;

3. receiving some form of public assistance within the six month period prior to their hire date;

4. lacking basic skills; or

5. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 36:

#### **§715. Targeted Employees for a Business Not in an Enterprise Zone or Economic Development Zone**

A. A business not located in an enterprise zone or economic development zone and receiving the benefits of this Chapter must certify that at least 35 percent of the employees filling net new jobs meet one of the following requirements:

1. resident of an enterprise zone in the state;

2. receiving some form of public assistance within the six month period prior to their hire date;

3. lacking basic skills; or

4. unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 36:

### **§717. Annual Employee Certification**

A. An annual Employee Certification Report (ECR) must be filed with the Business Incentive Services by May 31 on all active contracts validating compliance with §§709, 711, 713, and 715. Failure to file may result in contract cancellation.

B. If the employee certification report substantiates that the business has not created the permanent full-time net new jobs required for qualification under §701.E.1, the board shall cancel the contract and the business shall refund all credits and rebates received. If not timely paid in compliance with the contract, the department will notify Department of Revenue of the contract violation, and the business will be subject to the provisions of §737.

C. For projects with advance notifications filed with Business Incentives Services prior to the effective date of the 2010 revision of these rules, the annual employee certification process will be performed in accordance with prior policy and practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 36:

### **§721. Advance Notification**

A. An Advance Notification form, and the required fee, shall be filed with Business Incentive Services prior to the beginning of the project. All incentives for the same project must be indicated on one advance notification and be identified by one project number. It is not acceptable to apply for Enterprise Zone Program and use the same project in a miscellaneous capital addition application for the Industrial Tax Exemption Program. Internet filing of the advance notification may be made at the department website.

B. An advance notification expires one year after the estimated project ending date shown on the advance notification, unless an application is timely filed, or a written date revision request is received by Business Incentive Services prior to the expiration date.

C. An advance notification filed after the beginning of the project requires a waiver of late filing from the board, based upon events beyond the control of the business caused the late filing or documented fault or error on the part of the business incentive services that caused the business's late filing. Lack of knowledge of the existence of the Enterprise Zone Program or its benefits or procedures will not be accepted as a valid reason for waiving the timely filing requirement. A waiver of late filing will allow the business to proceed as if the advance notification was filed timely.

D. A business proposing a project exceeding 30 months must separate the project into phases with no phase having a project period greater than 30 months. The business must comply with §701.E. qualifications, and file a separate advance notification, application, project completion report, and affidavit of final cost, with the required fees, for each phase of the project. The business must elect either the sales and use tax rebate or the investment tax credit for all phases of the project. Businesses electing the investment tax credit are not subject to the 50 percent limitation of §731.B. for phases subsequent to the initial phase, and may elect to file one investment tax credit claim for all consecutive project periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 29:2302 (November 2003), amended LR 36:

### **§723. Application**

A. An application for an enterprise zone contract, and the required fee, must be filed with Business Incentives Services, on the form prescribed, within three months after the project ending date. Internet filing of the application may be made at the department's website. Upon request, the business shall receive a thirty day extension of time in which to file its application, provided such request for extension is received by Business Incentives Services no later than the filing deadline date.

B. With or after the filing of the advance notification, but no later than with the filing of the application, the business shall file with Business Incentives Services, on the form prescribed, a qualification certification of the intended number of permanent full-time net new jobs for purposes of determining eligibility for the Enterprise Zone Program.

C. An application fee equal to 0.2 percent (0.002) of the total estimated tax relief shall be submitted with each application. Total estimated tax relief includes jobs tax credits, state sales and use tax rebates and investment tax credits. Jobs tax credits are calculated by multiplying the total new jobs estimated to be created within the five-year contract period by \$2,500 (\$5,000 for rubber, aerospace or auto parts manufacturers). An additional application fee will be due if a project's employment or investment is increased from that stated in the application, resulting in a minimum fee of \$100 more than previously paid. The minimum fee is \$200 and the maximum fee is \$5,000 per application. All fees shall be made payable to: Louisiana Department of Economic Development.

D. An application must be submitted to Business Incentive Services at least 45 days prior to the board meeting where it is intended to be presented for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 29:2302 (November 2003), amended LR 36:

### **§725. Recommendations of the Secretaries of Economic Development and Revenue**

A. Business Incentive Services shall forward the application with its recommendation to the secretary of the Louisiana Department of Revenue and the secretary of the Louisiana Department of Economic Development for their review and recommendations. The secretaries of the Department of Revenue and the department may submit a letter of no objection in lieu of a letter of recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 36:

### **§727. Application Review by the Board of Commerce and Industry**

A. Business Incentive Services shall present an agenda of applications to the board with recommendations based upon its findings.

B. Each business or its representative will be notified of the board meeting date at which its application will be considered. The business should have someone present who is able to answer any questions the board may have regarding the information contained in the application. In the event there is no representative present, the application may be deferred or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 36:

#### **§729. Enterprise Zone Program Contract**

A. Upon approval of the application, the board shall enter into a contract with the business for the benefits allowed by this Chapter. The business must execute its portion of the contract and return it to Business Incentive Services within 60 days. If the contract is not returned within 60 days, the board may rescind the approval of the application. When the contract has been fully executed, an original contract will be returned to the business. An original will be sent to the Department of Revenue and, if applicable, a copy sent to the political subdivision.

B. Business Incentive Services must be notified, on the prescribed form, of any change that will affect the contract. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract, or the suspension, closing, or abandonment of operations. Failure to report any changes within six months may constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 36:

#### **§731. Project Completion**

A. Within six months after the project ending date or the governor's signature on the contract, whichever is later, the business shall file with Business Incentive Services, on the prescribed form, a project completion report and an affidavit of final cost, with the required inspection and audit fee.

B. The project completion report shall confirm the beginning of the project, the project ending date, and the incentive benefits elected. Local sales and use tax rebate is not available if the investment tax credit is elected. Except as provided in Section 721.D, the investment tax credit may not be elected if more than 50 percent of the qualified expenditures related to the project (including intangible costs such as architectural and/or engineering fees prior to construction) are incurred before the filing of the advance notification.

C. The affidavit of final cost shall list all eligible purchases and qualified expenditures for the project, with a description of the buildings, equipment, or other assets, and the cost of each item.

D. After completion of the project and the governor's signature of the contract, the department shall sign the project completion report and forward copies to the business, the Department of Revenue, and any political subdivision rebating local sales and use tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 36:

#### **§732. Investment Tax Credit Claims**

A. The investment tax credit is earned in the year in which the project is placed in service, and is based upon all qualified capitalized expenditures related to the project as of the date it is placed in service, regardless of whether the actual time period involved exceeds 30 months.

B. The investment tax credit claim must be filed with the Department of Revenue, Office Audit Division, with the required documentation.

C. The investment tax credit may be taken on qualified expenditures that are related to the project and are placed in service during the project period. The investment tax credit applies to the assets that are related to the qualified expenditures, provided that the business reasonably intends for such assets to remain at the project site for their expected useful life. The assets may be recorded on the financial statements of a company that is an affiliate of the business.

D. The claim for investment tax credit must be filed with the Department of Revenue no later than six months after the Governor's signature of the contract and the department's signature of the Project Completion Report, and must be accompanied by the signed Project Completion Report. Upon request, the business shall receive a thirty day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed sixty days, in which to file its claim provided that the business shows reasonable cause for granting such extension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 36:

#### **§733. Sales and Use Tax Rebate Requests**

A. The Enterprise Zone Program contract will not authorize the business to make tax exempt purchases from vendors. The Department of Revenue will advise the business on the proper procedures to obtain the state sales and use tax rebate. The request for rebate of sales and use taxes must be made by filing a claim with the Department of Revenue, Office Audit Division, and must include the following:

1. list of eligible purchases, including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales and use tax paid. The listed items must have been purchased by the business, or by a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the business at the project site or is listed in the Enterprise Zone Program contract;

2. certification that the listed materials are reasonably expected to qualify for a rebate under the Enterprise Zone Program; and

3. certification that state sales and use taxes have been paid on the listed items.

B. The request may be filed on the official Department of Revenue "claim for rebate" form or on other forms prepared by the business. After the Department of Revenue has validated the information on the claim for rebate, a rebate check will be issued for the amount of substantiated state sales and use taxes paid.

C. The request for rebate must be filed with the Louisiana Department of Revenue, and the political subdivision rebating local sales and use tax, no later than six months after governor's signature on the contract and the department's signature of the project completion report, and must be accompanied by the signed Project Completion Report. Upon request, the business shall receive a thirty day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed sixty days, in which to file its claim, provided that the business shows reasonable cause for granting such extension.

D. The business should contact the political subdivision issuing the endorsement resolution to determine the procedure for local sales and use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 36:

#### **§735. Business with a Contract Must File State Income and Franchise Tax Returns**

A. Businesses that have satisfied their Louisiana income tax and/or franchise tax liability by applying jobs tax credits earned under this Chapter shall file the same forms and tax returns with the Department of Revenue that are required if no jobs tax credit were claimed. Each annual return on which jobs tax credits are taken must have a copy of the letter from Business Incentive Services certifying the jobs tax credits earned. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return. Limited Liability Companies, Sub Chapter S Corporations, etc., must have the name(s) of owners and their Social Security numbers or Department of Revenue number for corporations listed on the contract in order for jobs tax credits to flow through to the owner(s).

B. Partnerships and sole proprietorships shall file the same returns that are required if the jobs tax credits were claimed. Each annual return on which jobs tax credits are taken must have a copy of the letter from Business Incentives Services certifying the tax credits earned. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 36:

#### **§737. Violation; Cancellation of Contract**

A. On the initiative of the board upon notice or a written complaint of violation of the terms of the statutes, rules or the contract, the board or its representative shall determine if

a full investigation should be made. The board shall have full authority for such investigation, including but not exclusively, the authority to call for reports, pertinent records, or other information from the business. If the investigation appears to substantiate a violation the board or its representative will present the subject contract for formal action.

B. If a business is found to be in violation of the statutes, these rules or the contract, board may cancel the contract and the business shall remit back to the state all jobs tax credits taken on income tax and franchise returns, all state and local sales and use tax rebates, Investment Tax Credit, and any other taxes that would have been imposed but for the issuance of this contract.

C. The department shall notify the Department of Revenue of the cancellation, and the Department of Revenue will proceed by all appropriate means to recapture all benefits received pursuant to this Chapter, including any penalty and interest due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 36:

#### **§739. Fees**

A. Advance notifications, applications, and Affidavits of Final Cost are not considered filed without payment of the proper fee, and Business Incentives Services may return the filing to the business if the estimated tax relief or the fee submitted is incorrect. An application or Affidavit of Final Cost may be resubmitted within 30 days with the correct fee without penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 36:

#### **§743. Relocation of Enterprise Zones**

A. A municipality or parish requesting the relocation of an Enterprise Zone must provide valid reason for requesting the move and must have the approval of the board.

B. The residents of originally designated Enterprise Zone may qualify as part of the 35 percent residency requirement.

C. The effective date of a relocation approved by the Board shall be the date of passage affixed to the resolution by the local governing authority requesting the relocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 36:

#### **§745. Appeals**

A. A business may appeal an action of the Board by submitting its appeal along with any necessary documentation to Business Incentives Services no later than 90 days after the board action. The appeal shall not be considered by the board less than 30 days after submission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 36:

**§749. Prohibit Local Fees and Prohibit Local  
Conflicting Employment Practices**

A. No political subdivision shall charge any fees or require any employment practices which conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:257 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:451 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2305 (November 2003), LR 36:

**Family Impact Statement**

This proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D, or on family formation, stability and autonomy. There should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

**Public Comments**

Interested persons may submit written comments to Marylyn Friedkin, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Business Incentives Division, First Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by FAX to (225) 342-9448, or by email to Marylyn.Friedkin@la.gov. All comments must be submitted (mailed and received) not later than 5 p.m., on September 27, 2010.

**Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on September 27, 2010 at 1:00 p.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Kristy G. McKearn  
UnderSecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Enterprise Zone Program**

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

There will be no additional costs due to the implementation of the proposed action for either state or local governmental units. The implementation in FY 07/08 of the Investment Tax Credit (ITC) as an alternate rebate vehicle has resulted in the decrease of administrative costs related to the implementation of the Enterprise Zone program for the Department of Revenue due to its simplified method. The investment credit information is reported in federal tax documentation requiring a simpler audit, whereas the sales tax rebate requires extensive auditing

of all invoices thus allowing some auditing resources to be focused in other areas of the agency.

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

This proposed rule marks the first promulgation of rules related to Act 400 of the 2007 Regular Session of the Legislature, which allowed for a 1.5% investment tax credit for qualified capital investment in lieu of a sales tax rebate on qualified expenditures. The impact of the investment credit is difficult to isolate due to the increase in utilization of the Enterprise Zone program over the last two years of reported data which masks any substitution effect between the sales tax rebate and the investment tax credit. However, investment credit claims were reported as \$2.1 million in FY 07/08 and \$12.0 million in FY 08/09 while sales tax rebates were reduced from \$39.1 million in FY 07/08 to \$30.4 million in FY 08/09. Thus, it is possible that implementation of the investment credit over the last several years has been relatively budget neutral (\$500,000 or less annually), as was also indicated in the fiscal note when Act 400 was passed.

The proposed action is intended to clarify eligibility requirements and align rules more closely to the statute. To the extent that these rule changes result in fewer projects qualifying for the program or qualifying in a smaller magnitude, state revenue collections will increase by the amount of the job and investment credits and state sales tax rebates no longer issued. Local revenue collections will increase by the amount of local sales tax rebates no longer issued. Though the potential for an increase in benefits is acknowledged in this analysis, it is anticipated that the net effect of this rule will be a reduction in benefits resulting from the Enterprise Zone program. Detailed data on existing projects required to evaluate these impacts is not readily available since it has not been a required component of the program evaluation in the past.

Fiscal impacts in this proposed rule could arise from several changes in the job measurement components of the program. The first is the determination of baseline jobs from which newly created jobs will be measured. This rule expands the timeframe over which baseline jobs occur from a one day snapshot of all jobs prior to the effective date of the enterprise zone contract to a four month Olympic average of all jobs on the project site prior to the effective date of the contract. Using a 4 month average job creation has the potential to provide a smaller or larger credit to applicants compared to a one day snapshot depending on whether the company was creating or losing jobs during the 4 months prior to the effective date of the contract, pursuant to approval by the Department of Economic Development and the Board of Commerce and Industry. A company may receive fewer benefits if its baseline is higher than the snapshot. However, if a company creates jobs during the four months prior to the effective date of the contract, and subsequently loses jobs after the effective date of the contract, it may realize a gain of Net New Jobs from the lower "Baseline" number if those jobs are replaced rather than from the higher "snapshot" number which would be used under the current rules. It is anticipated that a net increase in state revenue collections will result from this provision of the rule.

Once the baseline is established, the project must create at least 5 new full-time jobs over 24 months (or at least 10% of employees, minimum of 1 new full-time job over 12 months) after the effective date, 35% of which must meet certain requirements, which have not been altered by this proposed rule. However, the current rule does allow part-time jobs to be included at each threshold. The proposed rule also provides that the measure of 10% of employees will be based on those employed throughout the United States by the business and its affiliates whereas the current rule is ambiguous. Data is not currently available to determine which entities may be impacted by the inclusion of all related jobs in calculating 10%



**NOTICE OF INTENT**

**Department of Economic Development  
Office of Business Development**

**Industrial Ad Valorem Tax Exemption Program  
(LAC 13:I.Chapter 5)**

of the project workforce. To the extent that entities are counting only those jobs at the project site instead of the jobs affiliated with the company nation-wide and the projects involve fewer than 5 jobs, this provision will serve to increase tax collections for the state due to fewer credit qualifications.

When the qualification requirements are met, both full-time and part-time jobs in excess of the baseline created after the effective date will receive the job credit, as is the current standard. Actual data delineating full-time and part-time new jobs is not captured at this time for the Enterprise Zone program. Part-time jobs may not be a large component of the credit, which would lead to a minimal expected impact due to this provision.

Finally, in determining net new jobs created, this rule adds a few stipulations to the formula, namely in defining an eligible transfer of a job and the deduction of lost jobs from the net new jobs calculation. Jobs transferred from one affiliate to another will not be eligible unless an employee is hired in the original location to replace the transferred employee. Jobs that are created at one location for future transfer to the new location will be considered a net new job only when transferred under this proposed rule. Currently, the rule is ambiguous on this topic. To the extent that these components of the rule preclude qualification for the program by removing these jobs from the net new job calculation, state tax collections will increase. In addition, if jobs are lost in the state in other areas of the company or its affiliates, those losses must be deducted from the new jobs created to determine net new jobs required for qualification and credit eligibility. However, these job losses must have been anticipated at the time of qualification certification, unless the job loss is a result of a closure within the same metropolitan area (or parish) providing the same goods or services as the qualifying project. To the extent that deducting required job losses from the net new jobs calculations precludes qualification or decreases jobs currently eligible for the credit, state revenue collections will increase.

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

There will be minimal additional administrative costs for any directly affected persons or non-governmental groups. Those participating in the investment tax credit will have to provide an additional form providing data for qualification certification.

Some businesses may lose or gain benefits or realize a reduction or gain in benefits under the new rule vs. the current rule depending on the businesses' unique circumstances. The net amount (across all businesses) of this reduction or gain in benefits will be the same as the increase in state and local revenue collections as discussed in Section II.

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

The proposed action is expected to have a minimal effect on competition and employment across the state. It is estimated that less than one percent of Louisiana businesses utilize the Enterprise Zone program, so roughly 99 percent of Louisiana businesses, without regard for the size of participating businesses, will see no impact from the new rule. The competitive advantage due to cost mitigation obtained by a business eligible for the credits and rebates of this program may be somewhat increased or decreased under the new rule vs. the current rule depending on the individual business' unique circumstances. However, the net effect across all Louisiana businesses is expected to be minimal and a net decrease.

Kristy G. McKearn  
Undersecretary  
1008#004

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to repeal Sections 501 and 539 through 565, and amend and reenact Rules 502 through 507 of the Industrial Ad Valorem Tax Exemption Program as LAC 13:I.Chapter 5.

The proposed Rule change contains two substantive changes to the program. Current rules provide that if a company replaces property that had previously been exempted by IPTEP, the new property may be exempted only to the extent the cost of the new property exceeds the cost of the property being replaced. The current rule provide an exception in the case of capital expenditures in the amount of \$50 million or more and that create additional employment of at least 500 new jobs.

The proposed Rule eliminates the 500 new job requirement. The proposed Rule also creates a new exception in the case of replacement or reconstruction of property damaged by a "qualified disaster".

The remainder of the proposed changes are primarily technical in nature and attempt to simplify and clarify the rules, especially those provisions dealing with deadlines for filing advance notices and applications, extensions of filing deadlines, penalties for late filings, and eligibility of property subject to a capital lease. The proposed changes emphasize that a facility must be operating to be eligible, and that contracts for exemption are subject to a final inspection by DED staff to determine eligibility.

The proposed Rule change is necessary because the Board of Commerce and Industry and the staff of DED have determined that there is a need to provide an incentive to companies to renovate, modernize and upgrade their manufacturing plants, and to rebuild after damage from a natural disaster such as hurricane. The board and staff have also determined that there is a need to clarify and simplify the rules due to numerous problems with misinterpretation of the rules.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part I. Financial Incentive Programs**

**Chapter 5. Industrial Ad Valorem Tax Exemption Program**

**§501. Use of Louisiana Contractors, Labor and Supplies**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

### **§503. Advance Notification; Application**

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins. An advance notification fee of \$100 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification (subject to amendment by the applicant).

B. Except as otherwise provided for miscellaneous capital additions under §505, an application for tax exemption may be filed with OBD on the prescribed form:

1. either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;

2. the deadline for filing the application may be extended pursuant to §523;

3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with OBD on the prescribed form by December 31, until the Project Completion Report and Affidavit of Final Cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract.

C. An application fee shall be submitted with the application in the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

D. OBD reserves the right to return the advance notification, application, or Affidavit of Final Cost to the applicant if the form is incomplete or incorrect, or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

E. If the application is submitted after the filing deadline, the ten year term of exemption available under an initial contract and renewal thereof may be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction of five years. The board may impose any other penalty for late filing that it deems appropriate.

F. Eligibility of the applicant and the property for the exemption will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered. The property exempted may be increased or decreased based upon review of the application, Project Completion Report or Affidavit of Final Cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to review and approval of the Project Completion Report and Affidavit of Final Cost. If the applicant fails to timely file the Project Completion Report or Affidavit of Final Cost the board may, after notice to the applicant, terminate the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and

promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

### **§505. Miscellaneous Capital Additions**

A. Miscellaneous capital additions (MCA) is an accumulation of capital assets placed in service during the previous ad valorem tax year. An MCA must be part of a project that is completed within an 18 month period, and may not exceed \$5,000,000.

#### **B. MCA Applications**

1. For property in parishes other than Orleans Parish, MCA Applications for tax exemption shall be filed with OBD on the prescribed form not later than March 31 of each year, listing and clearly documenting the nature, date and amount of miscellaneous capital additions placed in service during the preceding calendar year, and deducting therefrom the original cost of any replacements made.

2. For property in Orleans Parish, MCA applications for tax exemption shall be filed with OBD on the prescribed form not later than October 31, listing and clearly documenting the nature, the date and the amount of miscellaneous capital additions placed in service since August 1 of the preceding year, and deducting therefrom the original cost of any replacements made.

C. An application fee shall be submitted with the MCA application in the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

D. OBD reserves the right to return the application to the applicant if the form is incomplete or incorrect, or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

E. If the application is submitted after the filing deadline, the ten year term of the exemption available under an initial contract and renewal thereof shall be reduced by one year for each month or portion thereof that the application is late, up to a maximum reduction of five years. The board may impose any other penalty for late filing that it deems appropriate.

F. Eligibility of the applicant and the property for the exemption will be reviewed by the Board based upon the facts and circumstances existing at the time the application is considered. The property exempted may be increased or decreased based upon review of the application.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

### **§507. Manufacturing Establishment Clarified**

A. The terms *manufacturing establishment* and *addition* as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engage in the business of working raw materials into wares suitable for use or which give new shapes, qualities, or combinations to matter which already has gone through some artificial process.

B. The board shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §517 and 519) and additions for existing manufacturing establishments within the state of Louisiana. Exemptions are granted to the owners of buildings that house a manufacturing operation and facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment;

b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process.

C. Leased property is eligible for the exemption, if the property is used in the manufacturing process, remains on the plant site, and the manufacturer is obligated under the lease agreement to pay the property taxes if the exemption were not granted.

D. Capitalized materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing facility. Some examples of these are:

1. ammonia in a freezing plant;
2. solvent in an extraction plant; and
3. catalyst in a manufacturing process.

E. To be eligible for exemption, a manufacturing establishment must be in an operational status, engaged in the business of producing or processing goods. An owner of a new facility under construction may apply for an exemption with the expectation that the facility will become operational. If the manufacturing establishment fails to become operational or ceases operations without a reasonable expectation of recommencing operations, the facility may no longer be eligible for exemption and its contract may be subject to termination under Section 531.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§509. Office Furniture and Fixtures; Portable Equipment**

A. Office furniture and fixtures are eligible for tax exemption only when they are an integral part of the manufacturing operation and permanently located at the manufacturing establishment.

B. Portable equipment is subject to exemption if it is not removed from the exempted property and is necessary to the continued maintenance or operation of the manufacturing process. Such property, therefore, is not to be rented, leased or used outside facility boundaries.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§511. Replacement Property**

A. Capital additions for remodeling an existing manufacturing facility may be exempted. If replacements are made, only the capital expenditures in excess of original cost shall be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will result in capital additions that exceed \$50,000,000.

B. Exemption may be granted on the costs of rebuilding a partially or completely damaged facility, but only on the amount in excess of the original cost.

C. Original costs deducted from replacements made or rebuilding shall be clearly documented.

D.1. A deduction for the original cost of property to be replaced, as provided by Subsections A or B, shall not be made if the project is related to the replacement or reconstruction of property after the destruction of or damage to such property, as a result of a qualified disaster.

2. For purposes of this Subsection, the term “qualified disaster” means:

a. a disaster which results from:

i. an act of terror directed against the United States or any of its allies; or

ii. any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises;

b. any disaster which, with respect to the area in which the property is located, resulted in a subsequent determination by the President of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; or

c. a disaster which is determined by an applicable federal, state, or local authority (as determined by the secretary) to warrant assistance from the federal, state, or local government or agency or instrumentality thereof.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§513. Relocations**

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted the original location. Exemption may be granted at the new location on those costs of necessary replacements which are in excess of the original cost at the prior facility.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003), LR 36:

**§515. Used Equipment**

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VD, Pan 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§517. Assessed Property**

A. The board shall not consider for tax exemption any manufacturing establishment or addition thereto once such establishment or addition has been in operation for a period of six months, unless the assessor of the parish in which the establishment or addition is located certifies in writing that said establishment or addition is not on the taxable rolls. If the establishment or addition is on the taxable rolls the board shall consider granting tax exemption only if the assessor agrees in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

B. The board shall not consider for tax exemption any property listed on an application on which ad valorem property taxes have been paid.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§519. Land**

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§521. Inventories**

A. The following are not eligible for tax exemption:

1. inventories of raw materials used in the course of manufacturing;
2. inventories of work-in-progress or finished products;
3. any other consumable items.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§523. Extension of Time**

A. OBD may grant an extension of up to six months for the filing of an application (§503.B.), a Project Completion Report (§525), or an Affidavit of Final Cost (§527), provided the request for extension is received prior to the filing deadline.

B. Additional extensions of time may be granted for good cause.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§525. Effective Date of Contract; Project Completion Report**

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The owner must file that information with OBD on the prescribed Project Completion Report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. The deadline for filing the Project Completion Report may be extended pursuant to §523.

B. The effective date of tax exemption contracts for property located in parishes other than Orleans Parish shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever occurs first. The effective date of tax exemption contracts for property located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§527. Affidavit of Final Cost**

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an Affidavit of Final Cost showing complete cost of the exempted project. A fee of \$100 shall be filed with the Affidavit of Final Cost. Upon request by OBD, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the Affidavit of Final Cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

**§529. Renewal of Tax Exemption Contract**

A. Application for renewal of the exemption must be filed with OBD on the prescribed form not more than six months before, and not later than, the expiration of the initial contract. A fee of \$50 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted.

Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the board for an additional period of up to but not exceeding five years.

B. Eligibility of the applicant and the property for renewal of the exemption will be reviewed by the Board using the same criteria that was used for the initial contract, and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract may be reduced by one year for each calendar month, or portion thereof, that the renewal application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Pan 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§531. Violation of Rules or Documents, Final Inspection**

A. The board reserves the right, on its own initiative or upon written complaint of an alleged violation of terms of tax exemption rules or documents, to conduct a final inspection. During the final inspection OBD may cause to be made a full investigation on behalf of the board and shall have full authority for such investigation including authority to demand reports or pertinent records and information from the applicant and complainants. Results of the investigation will be presented to the board.

B. All contracts of exemption shall be subject to the final inspection. If a final inspection indicates that the applicant has violated any terms of the contract or rules, or that the exempt facility is not engaged in manufacturing, the board may conduct a hearing to reconsider the contract of exemption, after giving the applicant not less than 60 days notice.

C. If the board determines that there has been a violation of the terms of the contract or the rules, that the property exempted by the contract is not eligible because it is not used in a manufacturing process, or that the facility has not commenced or has ceased manufacturing operations, the board may terminate or otherwise modify the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§533. Reporting Requirements for Changes in Operations**

A. OBD is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the

exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§535. Sale or Transfer of Exempted Manufacturing Establishment**

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§537. Reporting to the Parish Assessor**

A. The applicant shall file annually with the assessor of the parish in which the manufacturing establishment is located, a complete taxpayer's report on forms approved by the Louisiana Tax Commission, in order that the exempted property may be separately listed on the assessment rolls.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 36:

#### **§539. Manufacturing Establishment Clarified**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

#### **§541. Office Furniture and Fixtures**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

#### **§543. Portable Equipment**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of

Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§545. Relocated Plants**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 36:

**§547. Secondhand Items**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§549. Assessed Property**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§551. Land**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§553. Inventories**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§555. Extension of Time**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§557. Effective Date of Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§559. Affidavit of Final Cost**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§561. Renewal of Tax Exemption Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§563. Violation of Rules or Documents**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, repealed by the Department of Economic Development, Office of Business Development, LR 36:

**§565. Changes in Tax Exemption Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Commerce, Office of Commerce and Industry, 12:663 (October 1986), repealed by the Department of Economic Development, Office of Business Development, LR 36:

**Family Impact Statement**

This proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D, or on family formation, stability and autonomy. There should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

**Public Comments**

Interested persons may submit written comments to Lori Weber, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Business Incentives Division, First Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by FAX to (225) 342-9448, or by email to Lori.Weber@la.gov. All comments must be submitted (mailed and received) not later than 5 p.m., on September 27, 2010.

**Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on September 27, 2010 at 11 a.m. at the

Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Kristy G. McKearn  
Undersecretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: **Industrial Ad Valorem Tax Exemption Program**

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

The proposed rule will have no impact to implementation costs to either state or local governmental units. This tax exemption program already exists and is ongoing. The agency does not expect any change in the workload as a result of the proposed changes. This program is not administered in any part by local government, although there is frequent interaction between LED staff and local assessors.

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

The proposed rule could have a significant impact on revenue collections of local governments, especially those heavily dependent on a manufacturing base, as a result of the exceptions allowed in §511. This section allows that replacement projects greater than \$50 million (regardless of whether 500 or more jobs are created) and the reconstruction or repair of facilities damaged due to a declared disaster would no longer have to reduce the value of the replacement project by the cost of the property being replaced. A specific estimate of the decrease in property tax collections cannot be determined with a reasonable degree of confidence since the size and number of future projects are unknown. However, 2009 data indicates that about \$80 million in replacement projects over \$50 million qualified for the industrial tax exemption on a net basis. If these projects were allowed the exception in §511 which no longer requires the creation of 500 new jobs, local property tax collections across the entire state would decline by about \$800,000 per year, with an estimated cumulative effect added each year throughout the ten years of the exemption totaling \$8 million per year statewide, assuming application activity each year is the same as in 2009. This figure does not include the impact of exemptions on the replacement of property due to a disaster, which is also a new component of this rule. Depending on the magnitude of the disaster, the impact from this provision could be significant in the impacted region and will presumably be sustained throughout the ten years of the exemption.

The proposed rule will have little effect on state revenue collections. The Industrial Property Tax Exemption Program (IPTPEP) exempts only ad valorem taxes which the state does not levy. The program affects mainly local taxes.

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

Though deadline triggers and timelines are adjusted, the proposed rules do not impose any additional filing requirements on users of the program.

Manufacturers replacing taxable property in an amount in excess of \$50 million, and manufacturers rebuilding or repairing taxable property damaged by a declared disaster will realize a benefit of a larger ad valorem tax exemption on the declared restrictions which equates to the original cost of the property being replaced. The exact amount of the benefit will depend on the amount of capital investment and the property tax rates within the relevant jurisdiction and will be equal to the

loss in revenue to local taxing jurisdictions as stated in Section III.

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

This proposed change may benefit manufacturers by providing a more extensive ad valorem tax exemption to modernize and upgrade their facilities, and rebuild after a disaster.

Kristy G. McKearn  
Undersecretary  
1008#079

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Recovery School District; Standing and Executive Committees; and Advisory Councils  
(LAC 28:I.313, 501, and 503)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I, §313. The Recovery School District, §501. Standing and Executive Committees, and §503. Advisory Councils.

Louisiana Administrative Code, Title 28, Part I, Section 313.A.1.b.ii. contains reference to a statutory date set by Louisiana Revised Statute 17:10.7.A.(2). The Louisiana Administrative Code citation is being revised to change November 15, 2008 to the current statutory date November 15, 2009.

Louisiana Administrative Code, Title 28, Part I, Section 501. contains the committee structure for the Board of Elementary and Secondary Education. A committee is being added to this structure to assist the board in the exercise of its powers and responsibilities as defined in the constitution and by law.

Louisiana Administrative Code, Title 28, Part I, Section 503.C.2. contains the authority, charge and membership of the Adult Education Advisory Council. The Adult Education Advisory Council will no longer exist as an advisory council and all references are being removed from the Louisiana Administrative Code.

Louisiana Administrative Code, Title 28, Part I, Section 503.C.3. contains the authority, charge and membership of the Louisiana Educational Assessment Testing Commission(LEATC). Act 438 of the 2009 Regular Session of the Louisiana State Legislature abolished the commission and removed all references to powers, duties and functions. As a result of Act 438, LEATC will no longer exist as an advisory council and all references are being removed from the Louisiana Administrative Code.

Louisiana Administrative Code, Title 28, Part I, Section 503.C.7. and Section 501.B.4.f. contain the authority, charge and membership of the Teachers Certification Appeals Council. Act 31 of the 2009 Regular Session of the Louisiana Legislature changed the authority, charge and membership of the Teachers Certification Appeals Council making the current language regarding this council obsolete. BESE is deleting Teacher Certification Appeals Council language in these sections.

**Title 28**  
**EDUCATION**

**Part I. Board of Elementary and Secondary Education**  
**Chapter 3. Composition and General Authority**

**§313. The Recovery School District**

A. - A.1.b.i. ...

ii. No additional schools shall be transferred to the Recovery School District pursuant to R.S. 17:10.7 on or after November 15, 2009.

A.1.b.iii. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(B), R.S. 17:10.5, R.S. 17:10.6, R.S. 17:1990, R.S. 17:3973 and R.S. 36:651(F).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:413 (March 2008), amended LR 36:

**Chapter 5. Organization**

**§501. Standing and Executive Committees**

A. - B.3.d. ...

4. Quality Leaders/Educators Committee. The following are examples of issues that will be considered by the Quality Leaders/Educators Committee:

- a. leadership development;
- b. professional development;
- c. professional accountability;
- d. certification/articulation;
- e. approval of teacher education programs and units;
- f. commission(s)/task forces; and
- g. bulletin(s).

5. Recovery School District Committee. The following are examples of issues that will be considered by the Recovery School District Committee:

- a. RSD-NO;
- b. RSD-LA;
- c. RSD finance/budget;
- d. RSD master plan;
- e. RSD commission(s)/task forces;
- f. RSD bulletin(s)/administrative handbooks; and
- g. charter schools (Type 5).

6. State Authorized School Oversight Committee. The following are examples of issues that will be considered by the State Authorized School Oversight Committee:

- a. SSD/BSS;
- b. school approval: *Brumfield vs. Dodd* and nonpublic;
- c. commission(s)/task forces;
- d. bulletin(s)/administrative handbooks; and
- e. charter schools (Types 1, 2, 3, and 4).

7. Student/School Performance and Support Committee. The following are examples of issues that will be considered by the Student/School Performance and Support Committee:

- a. assessment issues: LEAP, GEE, iLEAP, remediation;
- b. accountability issues: school performance, interventions, improvements;
- c. academically at-risk schools;
- d. school choice, vouchers, supplemental education services;
- e. district dialogues;
- f. curriculum: content standards, GLEs, comprehensive curriculum, textbooks, elective courses;

- g. alternative schools/programs;
- h. special education;
- i. early childhood;
- j. school and community support;
- k. adult education;
- l. commission(s)/task forces; and
- m. bulletin(s).

C - C.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 35:223 (February 2009), LR 35:1874 (September 2009), LR 36:

**§503. Advisory Councils**

A. - C.1.c.iv. ...

2. Nonpublic School Commission

a. Authority: per state statute (R.S. 17:11).

b. Membership: 11 members, one member recommended by each board member, representing approved nonpublic schools.

c. Referrals/Responsibilities

i. Advise and counsel with the board relative to standards and guidelines affecting nonpublic schools.

ii. Consider all matters referred by the board.

3. Superintendents' Advisory Council

a. Authority: per BESE policy.

b. Membership: 22 members as follows:

i. 22 members, two city, parish, or other local public school superintendents recommended by each of the eight elected board members, within his/her district, if possible. The three at-large members should each appoint two city, parish, or other local public school superintendents from BESE Districts 3-8, with no more than one appointment per BESE district. It is recommended that the composition reflect all sizes of systems and be equitable in the regions represented, to the extent possible;

ii. the president of the Louisiana Association of School Superintendents (LASS) shall serve as chair of the council. In the event the president of LASS is not an appointed member of the council, the membership shall expand to 23 members during the term of service of that individual;

iii. attendance. Members who cannot attend a meeting may appoint another superintendent from his/her BESE district to represent him/her, and the proxy shall have the same voting privileges;

iv. expenses. Members shall not receive reimbursement for travel expenses from the board.

c. Referrals/Responsibilities

i. Consider all matters referred by the board.

ii. Recommendations from the Superintendents' Advisory Council shall go to the appropriate board committee. The department shall provide responses to the various recommendations.

4. Special Education Advisory Council

a. Authority. Pursuant to federal law and regulations (34 CFR 300.650-652) and to state law (R.S. 17:1954), the Special Education Advisory Council is created to assist the board in its programmatic and budgetary responsibilities for special education programs.

b. Membership: 17 members as follows. A majority of the voting members of the panel (nine) shall be



individuals with disabilities or parents of children with disabilities, ages birth through 26. The advisory council shall be representative of the state population and composed of individuals involved in, or concerned with, the education of children with disabilities:

i. 11 members, one member recommended by each board member, from the following categories:

(a). two parents of children with disabilities (ages birth through 26);

(b). one individual with a disability;

(c). one special education teacher;

(d). one regular education teacher;

(e). two representatives of institutions of higher education that prepare special education and related services personnel;

(f). one local education official;

(g). one administrator of a program for children with disabilities;

(h). one representative of a private school;

(i). one representative of a public charter school;

ii. one representative of a state agency involved in the financing or delivery of related services to children with disabilities, recommended by the Department of Health and Hospitals;

iii. one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities, recommended by Louisiana Rehabilitation Services;

iv. one administrator of a program for children with disabilities, recommended by a USDOE designated Parent Training and Information Center;

v. one representative from the state juvenile/adult corrections agencies, recommended by the Department of Public Safety/Corrections;

vi. one state or local education official who carries out activities of the McKinney-Vento Homeless Assistance Act, recommended by the Louisiana State Superintendent of Education;

vii. one representative from the state child welfare agency responsible for foster care, recommended by the Department of Social Services.

c. Referrals/Responsibilities

i. Advise the state educational agency of unmet needs within the state in the education of children with disabilities.

ii. Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities.

iii. Advise the state educational agency in developing evaluations and reporting on data to the U.S. Secretary of Education.

iv. Advise the state educational agency in developing corrective action plans to address findings identified in federal monitoring reports.

v. Advise the state educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

vi. Review and comment on the department's recommendations for disbursement of competitive grants and awards to local education agencies and qualified non-profit entities; and

vii. Consider all matters referred by the board.

5. Textbook/Media/Library Advisory Council

a. Authority: per BESE policy.

b. Membership: 14 members as follows:

i. one member of the legislature (state senator), recommended by the Senate President;

ii. one member of the legislature (state representative), recommended by the Speaker of the House;

iii. one member recommended by the governor; and

iv. 11 members, one member recommended by each board member, from the following categories:

(a). one teacher, grades K-6;

(b). one teacher, grades 7-12;

(c). one teacher (any grade) or coordinator of technology;

(d). two school librarians;

(e). one curriculum supervisor;

(f). two textbook supervisors;

(g). one parent or business representative;

(h). one LEA superintendent; and

(i). one school principal.

c. Referrals/Responsibilities

i. Advise the board on policy and procedure issues relating to the textbook adoption process.

ii. Consider all matters referred by the board.

d. Special Advisory Committees. Special advisory committees may be created by the board with a limited charge and scope to study a specific topic as referred by the board.

D. - F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, R.S. 17:11, 34 CFR 300.650-652, and R.S. 17:1954.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008), amended LR 35:1874 (September 2009), LR:36

#### **Family Impact Statement**

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg  
Executive Director

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

**RULE TITLE: Recovery School District; Standing and  
Executive Committees; and Advisory Councils**

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School,  
District, and State Accountability System  
(LAC 28:LXXXIII.603, 611, 701, 708, and 709)

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

1. Louisiana Administrative Code, Title 28, Part I, Section 313.A.1.b.ii. contains reference to a statutory date set by Louisiana Revised Statute 17:10.7.A.(2). The Louisiana Administrative Code citation is being revised to change November 15, 2008 to the current statutory date November 15, 2009.

2. Louisiana Administrative Code, Title 28, Part I, Section 501. contains the committee structure for the Board of Elementary and Secondary Education. A committee is being added to this structure to assist the board in the exercise of its powers and responsibilities as defined in the constitution and by law.

3. Louisiana Administrative Code, Title 28, Part I, Section 503.C.2. contains the authority, charge and membership of the Adult Education Advisory Council. The Adult Education Advisory Council will no longer exist as an advisory council and all references are being removed from the Louisiana Administrative Code.

4. Louisiana Administrative Code, Title 28, Part I, Section 503.C.3. contains the authority, charge and membership of the Louisiana Educational Assessment Testing Commission (LEATC). Act 438 of the 2009 Regular Session of the Louisiana State Legislature abolished the commission and removed all references to powers, duties and functions. As a result of Act 438, LEATC will no longer exist as an advisory council and all references are being removed from the Louisiana Administrative Code.

5. Louisiana Administrative Code, Title 28, Part I, Section 503.C.7. and Section 501.B.4.f. contain the authority, charge and membership of the Teachers Certification Appeals Council. Act 31 of the 2009 Regular Session of the Louisiana Legislature changed the authority, charge and membership of the Teachers Certification Appeals Council making the current language regarding this council obsolete. BESE is deleting Teacher Certification Appeals Council language in these sections.

This action will have no fiscal effect other than an estimated cost of \$492.00 for advertising in the Louisiana Register.

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

This action will have no effect on revenue collections of state and local government units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

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

This action will have no effect on competition and employment.

Jeanette Vosburg  
Executive Director  
1008#054

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §603. Determining a Cohort for Graduation, §611. Documenting a Graduation Index, §701. Subgroup Component Indicators, §708. Using a Graduation Rate in the Subgroup Component, and §709. Failing the Subgroup Component. Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State’s Accountability System is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Proposed changes in Bulletin 111, Chapter 6, provide detail of how the cohort is determined for graduation and how a Graduation Index is documented.

Proposed changes in Bulletin 111, Chapter 7, provide detail of the Subgroup Component Indicators and how the Graduation Rate is calculated.

**Title 28  
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,  
District, and State Accountability System  
Chapter 6. Graduation Cohort, Index, and Rate  
§603. Determining a Cohort for Graduation**

A. - B. ...

C. Students who exit Louisiana’s Student Information System (SIS) system in less than four years for legitimate reasons shall not be included in the cohort’s graduation index calculations.

1. For graduation cohort calculations, exit codes 07, 10, 14, 16, and 20 from §611 are legitimate, along with any special codes created to deal with natural disasters.

2. Beginning with accountability decisions made in fall 2010 (using 2009 grad data), the only legitimate leavers from a cohort are those who;

- a. transfer from Louisiana K-12 public education to a diploma awarding school or program;
- b. emigrate to another country;
- c. are deceased.

3. Specific documentation is required for students to be considered legitimate leavers.

a. The only acceptable documentation for transfers is a request for student records from the qualifying school or program, or a letter from an official in the receiving school or program acknowledging the students enrollment. The documentation must be clearly dated before October 1

following the student's exit from the Louisiana Student Information System (SIS). The LDE can, during data certification and audits, require proof that the school or program is recognized as a "diploma awarding" by the state in which it is located.

b. Documentation for a student transfer to home school is a school withdrawal form with parent signature and an LDE letter of approval to the parent – both dated before October 1 following the student's exit from the Louisiana SIS.

c. Students who emigrate to another country must be documented with a statement signed by a parent or a request for student records.

d. An obituary or a letter from a parent is sufficient documentation for a deceased student.

4. The LDE shall maintain and post on the LDE website a list of schools that are considered "non-diploma awarding."

5. A school is classified as "non-diploma awarding" if it;

a. awards fewer than five regular diplomas a year for two consecutive years; or

b. enrolls fewer than 10 12th graders for a Full Academic Year for each of two consecutive years.

c. the LDE can grant exceptions to these rules for new schools and schools with small populations upon district request if it can be determined that no circumvention of accountability consequences will occur. The district is responsible for providing any data requested by the LDE.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 33:424 (March 2007), LR 33:2031 (October 2007), LR 35:2312 (November 2009), LR 36:

**§611. Documenting a Graduation Index**

Beginning with academic year 2005-2006, all schools are required to maintain the following documentation if the corresponding exit code is used.

Exit Code Documentation		
Code	Descriptions	Required Documentation
01	Expelled	Due process documentation supporting expulsion. Students must be enrolled on October 1 of the following year.
03	Illness	Letter from a physician stating the student's date(s) of care written on the doctor office's letterhead with the doctor's original signature. Students must be enrolled on October 1 of the following year.
04	Graduate with Diploma	Official transcript showing successful completion of requirements along with records supporting any academic or career/technical endorsements.
05	GED only	LDE confirmation document and entry/exit in SIS.
06		***
07	Death (of student) or permanent incapacitation	Letter from parent or obituary.
08	Transferred to another public school within district	SIS (Student Information System) record indicating transfer.
09	Transferred to another public school within Louisiana	SIS record indicating transfer.
10	Transferred out of state or country	Request for records from the receiving school (out of state). Request for records or a statement signed by the parent. Documentation proving a student was a foreign exchange student.
12	Transferred to Correctional Institution	SIS record indicating transfer.
14		***
15		***
16		***
17	Completed all Carnegie unit requirements but not the GEE	STS (Student Transcript System) record
20		***
21	Transferred to State school	SIS record indicating transfer.
22	Options Program Completer: GED & Industry Based Certificate	STS and/or CATE (Career and Technical Education) record
23	Options Program Completer: GED & Locally Designed Skills Certificate	STS and/or CATE record
24	Options Program Completer: Industry Based Certification	STS and/or CATE record
25	Options Program Completer: Local Skills Certificate Only	STS and/or CATE record
26	Options Program Completer: Certificate of Completion	STS and/or CATE record
27	Exit under SBESE Academic School Choice Policy	SIS record indicating transfer.
28	Exit under SBESE Unsafe School Choice Policy	SIS record indicating transfer.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 35:639 (April 2009), LR 35:2312 (November 2009), LR 36:

**Chapter 7. Subgroup Component**

**§701. Subgroup Component Indicators**

A. - A. 1.c.ii. ...

d. Beginning with the fall 2010, the additional academic indicator for schools with a 12<sup>th</sup> grade shall be evaluated using new procedures as required by the U. S. Department of Education published in High School

Graduation Rate: *Non-Regulatory Guidance* (December 22, 2008).

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1026 (June 2006), amended LR 33:424 (March 2007), LR 36:

**§708. Using a Graduation Rate in the Subgroup Component**

A. - C.1. ...

Louisiana Annual Graduation Rate Targets													
2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
63.0%	64.3%	65.6%	66.9%	68.2%	69.5%	70.8%	72.2%	73.5%	74.8%	76.1%	77.4%	78.7%	80.0%

4. Each Louisiana school that enrolls students in 9<sup>th</sup> grade or higher and offers at least a regular diploma shall have annual targets calculated by the LDE that begin with the school's 2007 graduation rate and increase by equal increments (rounded to 1 decimal place) to reach 80 percent in 2022.

5. The increment each school must improve each year to maintain its progress toward the 2022 goal of 80 percent is the "annual improvement step."

E. Confidence intervals shall not be applied to any grad rate considerations beginning with the 2010 accountability decisions.

F. Determining if a school or subgroup within a school has made AYP as it relates specifically to graduation rate is accomplished by answering a series of Yes/No questions. When an answer is "yes," a school or subgroup has made AYP (related to graduation rate) and no further answers are required for the specific school or subgroup.

1. Does the cohort have fewer than 40 members?
2. Has the cohort met or exceeded the 80 percent goal?
3. Has the cohort met or exceeded the state annual target?
4. Has the cohort met or exceeded the school annual target?
5. Has the cohort met or exceeded 110 percent of the annual improvement step (defined in D 5).

G. If at the end of the series of five questions a "yes" is not provided, the cohort has failed AYP.

H. A school (or subgroup) that exceeds the state's target with its 2009 graduation rate shall use the state targets as school targets. New schools shall have targets based on their second year graduation rates and the number of years remaining until 2022.

I. An LEA may request a one year waiver of sanctions in fall 2010 for a school that enters SI 1 because of two consecutive years of AYP failure due to only graduation rate if the school and all subgroups in the school have a three year weighted average graduation rate that exceeds the school's annual target.

1. The LEA is responsible for initiating the waiver request and providing data to the LDE.
2. If a school passes AYP the following year, the waiver is extended one year.
3. If after receiving a waiver the school fails AYP either of the next two years, the school shall be labeled SI 2 and

D. Beginning in 2010 (using the spring 2009 graduation data), Louisiana shall comply with High School Graduation Rate: *Non-Regulatory Guidance* (December 22, 2008) published by the U. S. Department of Education.

1. Louisiana's 2022 graduation rate goal is 80 percent
2. Louisiana's 2009 (used in 2010 accountability decisions) graduation rate target is 63 percent.
3. Louisiana's annual targets shall increase to reach the 2022 of 80 percent as shown in the following table.

implement sanctions for SI 1 and SI 2, if the failure is because of graduation rate.

J. In 2010 and 2011, the "whole school" graduation rate shall be evaluated using the steps delineated in this subsection (§708. Using a Graduation Rate in the Subgroup Component).

K. In 2010 and 2011, any school or subgroup in the school that must use the safe harbor provisions and graduation rate as an AAI will use the steps delineated in this subsection.

L. In 2012 and future years, all subgroups and the whole school shall be evaluated using the steps delineated in this subsection regardless of safe harbor considerations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1026 (June 2006), amended LR 33:424 (March 2007), LR 36:

**§709. Failing the Subgroup Component**

A. - B.-2. ...

3. beginning in fall 2010 using 2009 graduation data met one of the five criteria in §708 F, above for the whole school.

4. beginning in fall 2010 using 2009 graduation data met one of the five criteria in §708 F, above for the whole school and each subgroup within the school with sufficient data for a valid and reliable decision.

NOTE: If a school in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 30:2256 (October 2004), LR 32:1026 (June 2006, LR 33:2594 (December 2007), LR 36:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office, which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No
3. Will the proposed Rule affect the functioning of the family? No
4. Will the proposed Rule affect family earnings and family budget? No
5. Will the proposed Rule affect the behavior and personal responsibility of children? No
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

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

**RULE TITLE: Bulletin 111—The Louisiana School,  
District, and State Accountability System**

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

Proposed changes in Bulletin 111, Chapter 6 provide detail of how the cohort is determined for graduation and how a Graduation Index is documented.

Proposed changes in Bulletin 111, Chapter 7 provide detail of the Subgroup Component Indicators and how the Graduation Rate is calculated.

The proposed rule changes will result in no cost or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#055

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 126—Charter Schools—Fourth Year Review of  
Charter Schools on Contract Probation  
(LAC 28:CXXXIX.1305)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for

advertisement revisions to *Bulletin 126—Charter Schools: §1305. Fourth Year Review of Charter Schools on Contract Probation*. Current policy provides that a charter school meeting certain standards in June of its fourth year of operation shall receive a one-year extension. The proposed rule provides that a charter school meeting certain standards in June of its fourth year of operation may receive a one-year extension, thereby giving the charter school authorizer the ability to approve or deny an extension. The proposed rule would guide charter school authorizers' consideration of charter school extensions upon meeting certain standards during their fourth year of operation.

**Title 28**

**EDUCATION**

**Part CXXXIX. Bulletin 126—Charter Schools**

**Chapter 13. Charter Term**

**§1305. Fourth Year Review of Charter Schools on  
Contract Probation**

A. A charter school granted a one-year extension and placed on probation after its third year of operation pursuant to §1303.B.2 shall comply with all conditions of probation established by BESE and the Department of Education Charter School Office.

1. A charter school meeting the following standards in January of its fourth year of operation may receive a one-year extension, at the conclusion of its fourth year:
    - a. all financial performance standards;
    - b. all legal and contractual standards; and
    - c. one of following student performance measures:
      - i. Baseline SPS Year Three is 60.0 or above; or
      - ii. Growth SPS met.
  2. A charter school meeting the following standards in June of its fourth year of operation may receive a one-year extension:
    - a. all financial performance standards;
    - b. all legal and contractual standards; and
    - c. one of the following student performance standards:
      - i. Assessment Index Year Four is 60.0 or above;
      - ii. Required Growth of 10 points has been met.
- or

B. A charter school not meeting the standards set forth in §1305.A.1 shall be recommended for revocation of its charter and shall proceed to a revocation hearing as set forth in Chapter 17 of this bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), LR 36:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Application Packet  
(LAC 28:CXXXI.805)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §805. Application Packet. This revision will require certification appeal requests to be submitted directly to the Division of Certification, Leadership, and Preparation. This revision of policy will eliminate appeal requests being submitted to the State Board of Elementary and Secondary Education for processing. This revision in Bulletin 746 clarifies the appeal application process.

#### Title 28

#### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 8. Certification Appeal Process §805. Application Packet

A. An individual seeking an appeal of his/her certification decision is advised to read carefully all information about completing the Certification Appeal Application before beginning the process. The complete application packet is located on the Teach Louisiana website. If there are questions regarding the appeal packet, an applicant can contact the Division of Certification, Leadership, and Preparation at 225-342-3490.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1829 (October 2006), amended LR 36:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

Will the proposed Rule affect the stability of the family?  
No.

Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

Will the proposed Rule affect the functioning of the family? No.

Will the proposed Rule affect family earnings and family budget? No.

Will the proposed Rule affect the behavior and personal responsibility of children? No.

Is the family or a local government able to perform the function as contained in the proposed Rule? No.

2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No

3. Will the proposed rule affect the functioning of the family? No

4. Will the proposed rule affect family earnings and family budget? No

5. Will the proposed rule affect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed rule? Yes

#### Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

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

#### RULE TITLE: Bulletin 126—Charter Schools—Fourth Year Review of Charter Schools on Contract Probation

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

The proposed rule provides that a charter school meeting certain standards in June of its fourth year of operation may receive a one-year extension, thereby giving the charter school authorizer the ability to approve or deny an extension. If a charter school is denied a one-year extension, the school would cease to operate and students would enroll in other schools. To the extent that these students enroll in other public schools, state and local per pupil allocations through the state's Minimum Program Foundation formula could change by an undeterminable amount. The proposed policy is estimated to cost \$164.00 for advertising in the Louisiana Register.

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

The proposed policy will have no effect on revenue collections of state and local government units.

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

The proposed policy could result in non-profit organizations serving as charter school operators no longer receiving funds through the state's Minimum Foundation Program and through other state and federal programs if the charter school is denied an extension.

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

The proposed policy could result in the termination of employment for individuals employed at a charter school that is denied an extension. The number of charter schools that might be denied an extension as a result of this action, and the number of individuals employed by each, cannot be determined.

Beth Scioneaux  
Deputy Superintendent  
1008#056

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel Application Packet**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
This revision in policy of Bulletin 746 will require certification appeal requests to be submitted directly to the Division of Certification, Leadership, and Preparation. This revision of policy will eliminate appeal requests being submitted to the State Board of Elementary and Secondary Education for processing. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#059

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—CTTIE-1 and CTTIE-2 Certificates  
(LAC 28:CXXXI.505)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §505. CTTIE-1 and CTTIE-2 Certificates. This revision will align Career and Technical Trade and Industrial Education (CTTIE) certified nursing assistant and certified nursing assistant program coordinator eligibility requirements with guidelines of the Louisiana Department of Health and Hospitals. Recently the Louisiana Department of Health and Hospitals revised their guidelines on certification of nurse assistant instructors. Due to the revisions, the requirements of CTTIE Certified Nursing Assistant (CNA) and Certified

Nursing Assistant Program Coordinator must reflect those changes as well. All applicants must hold an approved CTTIE prior to providing CNA instruction.

## Title 28

### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel

##### §505. CTTIE-1 and CTTIE-2 Certificates

- A. - B.5. ...
- C. Certified Nursing Assistant (CNA) Eligibility Requirements
1. Applicant must be a professional nursing program graduate with current Louisiana licensure as a registered nurse (RN) or practical nurse (PN).
  2. Applicant must have a minimum of two of the past four years of experience in staff nursing or PN or RN nursing education. One year of this experience must be in caring for the elderly or chronically ill.
  3. Licensed practical nurses (LPN) may serve as a certified nursing assistant instructor under the direct supervision of a registered nurse. LPNs, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have two years of experience in caring for the elderly and/or chronically ill. Applicant must submit a letter from the district CTE supervisor with the name of the RN supervisor.
  4. All instructors must have a CNA "Train the Trainer Certificate" and meet Certified Nursing Assistant Regulations, as mandated by the Louisiana Department of Health and Hospitals (DHH)-Health Standards section.
  5. A Certified Nurse Assistant (CNA) instructor must be approved by the Louisiana Department of Education, Career and Technical Education (CTE) office.
  6. Applicant must have an approved Nurse Assistant (511614.000) CTTIE-1 prior to CNA instruction.
- D. Certified Nursing Assistant, Program Coordinator—Eligibility Requirements. The program coordinator must be a registered nurse (RN) and must have the following experience and qualifications:
1. current Louisiana licensure as a registered nurse (RN).
  2. a minimum of two years of nursing experience, of which at least one year must be in caring for the elderly or chronically ill, obtained through employment in any of the following:
    - i. a nursing facility/unit;
    - ii. a geriatrics department;
    - iii. a chronic care hospital;
    - iv. other long-term care setting; or
    - v. experience in varied responsibilities including, but not limited to, direct resident care or supervision and staff education.
  3. completion of VTIE, CTTIE, CNA "Train-the-Trainer" type program or a master's degree or higher.
  4. all instructors must meet requirements mandated by the Louisiana Department of Health and Hospitals (DHH)-Health Standards section.

5. applicant must have an approved Nurse Assistant (511614.000) CTTIE-1 prior to CNA instruction.

E. - G.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 32:1813 (October 2006), amended LR 35:2752 (December 2009), LR 36:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

Will the proposed Rule affect the stability of the family? No.

Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

Will the proposed Rule affect the functioning of the family? No.

Will the proposed Rule affect family earnings and family budget? No.

Will the proposed Rule affect the behavior and personal responsibility of children? No.

Is the family or a local government able to perform the function as contained in the proposed Rule? No.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

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

#### **RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel—CTTIE-1 and CTTIE-2 Certificates**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This revision will align Career and Technical Trade and Industrial Education (CTTIE) certified nursing assistant and certified nursing assistant program coordinator eligibility requirements with guidelines of the Louisiana Department of Health and Hospitals. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#058

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Louisiana Teacher Preparation Programs (LAC 28:CXXXI.Chapter 2)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §205. Minimum Requirements for Approved Regular Education Programs for Grades PK-3: Adopted May 24, 2001; Effective July 1, 2002; §207. Minimum Requirements for Approved Regular Education Programs for Grades 1-5: Adopted May 24, 2001; Effective July 1, 2002; §209. Minimum Requirements for Approved Regular Education Programs for Grades 4-8: Adopted May 24, 2001; Effective July 1, 2002; §211. Minimum Requirements for Approved Regular Education Programs for Grades 6-12: Adopted May 24, 2001; Effective July 1, 2002; §213. College of Arts/Humanities/Sciences Degree Pathway to Secondary Education Certification (Grades 6-12): Adopted November 18, 2003; Effective January 1, 2004; and §215. Minimum Requirements for Approved Regular Education All-Level Programs for Grades K-12: Adopted November 2003; Effective August 1, 2005. This policy revision of Louisiana traditional teacher preparation programs will allow the following reductions: (1) require fewer “flexible credit hours” for the grades PK-3, 1-5, 4-8, and K-12 baccalaureate programs which will decrease the total minimum credit hours from 124 to 120; and (2) Eliminate the secondary focus areas (e.g., minor with 19 credit hours) in the grades 6-12 baccalaureate programs and only require the primary focus areas (major with 31 or more credit hours). This policy complies with Postsecondary Commission’s recommendation to reduce the number of credit hours for a baccalaureate degree.

#### **Title 28**

#### **EDUCATION**

#### **Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

#### **Chapter 2. Louisiana Teacher Preparation Programs Subchapter A. Traditional Teacher Preparation Programs**

#### **§205. Minimum Requirements for Approved Regular Education Programs for Grades PK-3: Adopted May 24, 2001; Effective July 1, 2002**

A. For certification as a teacher in grades pre-kindergarten through third (PK-3) in the state of Louisiana,



the focus is on the areas of Early Childhood, Reading/Language Arts, and Mathematics.

1. General Education—39 semester hours: Requirements provide the prospective PK-3 teacher with basic essential knowledge and skills.

English	12 semester hours
Mathematics	9 semester hours
Sciences	9 semester hours
Social studies	6 semester hours
Arts	3 semester hours

2. Focus on Early Childhood, Reading/Language Arts, and Mathematics—33 semester hours: Requirements provide a greater depth of knowledge in early childhood education.

Nursery school and kindergarten coursework	12 semester hours
Reading/language arts (Additional Content and Teaching Methodology)	12 semester hours
Mathematics	9 semester hours
Knowledge of the Learner and the Learning Environment, with the Emphasis on Early Childhood	15 semester hours

a. Requirements provide the prospective PK-3 teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child, as follows:

- i. child/adolescent development/psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

3. Methodology and Teaching—15 semester hours: Requirements provide the prospective PK-3 teacher with fundamental pedagogical skills.

Teaching methodology	6 semester hours
Student teaching	9 semester hours
Flexible hours for the university's use	18 semester hours
Total required hours in the program	120 semester hours

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1783 (October 2006).

**§207. Minimum Requirements for Approved Regular Education Programs for Grades 1-5: Adopted May 24, 2001; Effective July 1, 2002**

A. For certification as a teacher in elementary grades 1-5 in the state of Louisiana, the focus is on the areas of Reading/Language Arts and Mathematics.

1. General Education—54 semester hours. Requirements provide the prospective elementary grades 1-5 teacher with basic essential knowledge and skills.

English	12 semester hours
Mathematics	12 semester hours
Sciences	15 semester hours
Social studies	12 semester hours
Arts	3 semester hours

2. Focus on Reading/Language Arts and Mathematics—21 semester hours. Requirements provide the prospective elementary grades 1-5 teacher with fundamental pedagogical skills.

Reading/language arts (additional content and teaching methodology)	12 semester hours
Mathematics (additional content and teaching methodology)	9 semester hours
Knowledge of the Learner and the Learning Environment, with the Emphasis on the Elementary School Student	15 semester hours

a. Requirements provide the prospective elementary grades 1-5 teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child, as follows:

- i. child/adolescent development or psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

3. Methodology and Teaching: 15 semester hours. Requirements provide the prospective elementary grade 1-5 teacher with fundamental pedagogical skills.

Teaching methodology	6 semester hours
Student teaching	9 semester hours
Flexible hours for the university's use	15 semester hours
Total required hours in the program	120 semester hours

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1784 (October 2006).

**§209. Minimum Requirements for Approved Regular Education Programs for Grades 4-8: Adopted May 24, 2001; Effective July 1, 2002**

A. For certification as a teacher in middle grades 4-8 in the state of Louisiana, the focus is on two in-depth teaching areas.

1. General Education—54 semester hours. Requirements provide prospective middle grades 4-8 teachers with basic essential knowledge and skills.

English	12 semester hours
Mathematics	12 semester hours
Sciences	15 semester hours
Social Studies	12 semester hours
Arts	3 semester hours

2. Focus Area #1—19 hours total combined general education and focus area coursework.

English	7 or more hours
Mathematics	7 or more hours
Social Studies	7 or more hours
Science	4 or more hours

3. Focus Area #2—19 hours total combined general education and focus area coursework.

English	7 or more hours
Mathematics	7 or more hours
Social Studies	7 or more hours
Science	4 or more hours

4. Knowledge of the Learner and the Learning Environment, with the Emphasis on the Middle School Student—15 semester hours.

a. Requirements provide the prospective middle grades 4-8 teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child:

- i. child/adolescent development/psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

5. Methodology and Teaching—24 semester hours. Requirements provide the prospective middle grades 4-8 teacher with fundamental pedagogical skills.

Teaching methodology	9 semester hours
Reading	6 semester hours
Student teaching	9 semester hours
Flexible hours for the university's use	13-16 semester hours
Total required hours in the program	120 semester hours

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1784 (October 2006).

**§211. Minimum Requirements for Approved Regular Education Programs for Grades 6-12: Adopted May 24, 2001; Effective July 1, 2002**

A. For certification as a secondary teacher in grades 6-12 in the state of Louisiana, the focus is on content in the teaching area.

1. General Education—30 semester hours. Requirements provide prospective secondary grades 6-12 teachers with basic essential knowledge and skills.

English	6 semester hours
Mathematics	6 semester hours
Sciences	9 semester hours
Social Studies	6 semester hours
Arts	3 semester hours

2. Focus Area—A total of 31 hours of combined general education and focus area coursework. These focus hours prepare a prospective secondary teacher of grades 6-12 in the content area essential to the certification area.

English, Social Studies, or Mathematics	25 or more hours
-or-	
Science	22 or more hours
-or-	
Other focus areas	31 or more hours

3. Knowledge of the Learner and the Learning Environment, with the Emphasis on the Secondary School Student—15 semester hours.

a. Requirements provide the prospective secondary grades 6-12 teacher with a fundamental understanding of the learner and the teaching/learning process. Coursework should address the needs of the regular and the exceptional child:

- i. child/adolescent development or psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

4. Methodology and Teaching—18 semester hours. Requirements provide the prospective secondary grade 6-12 teacher with fundamental pedagogical skills.

Teaching methodology	6 semester hours
Reading	3 semester hours
Student teaching	9 semester hours
Flexible hours for the university's use	26-35 semester hours
Total required hours in the program	120 semester hours

NOTE: The following areas are approved primary teaching focus areas, to include a minimum of 31 semester hours of credit: Agriculture; Biology; Business; Chemistry; Computer Science; Earth Science; English; Environmental Science; Family and Consumer Sciences; a specific Foreign Language; General Science; Marketing; Mathematics; Physics; Social Studies; Speech; Technology Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1785 (October 2006).

**§213. College of Arts/Humanities/Sciences Degree Pathway to Secondary Education Certification (Grades 6-12): Adopted November 18, 2003; Effective January 1, 2004**

A. This certification structure identifies courses that candidates must complete if pursuing a degree through the College of Arts/Humanities/Sciences, with an education minor, to become certified to teach secondary grades 6-12.

1. General Education—30 semester hours. These requirements provide prospective secondary grades 6-12 teachers with basic essential knowledge and skills.

English	6 semester hours
Mathematics	6 semester hours
Sciences	9 semester hours
Social Studies	6 semester hours
Arts	3 semester hours

2. Focus Areas—Content Area (semester hours can include general education coursework, if appropriate, and additional coursework)—31 semester hours.

3. Focus Areas—Education—33 semester hours.

a. Knowledge of the Learner and the Learning Environment with the Emphasis on the Secondary School Student—15 semester hours:

- i. adolescent development or psychology;
- ii. educational psychology;
- iii. the learner with special needs;
- iv. classroom organization and management;
- v. multicultural education.

b. Methodology and Teaching—18 semester hours. Requirements provide the prospective secondary grades.

i. 6-12 teacher with fundamental pedagogical skills:

- ii. teaching methodology (six semester hours);
- iii. reading (three semester hours);
- iv. student teaching (nine semester hours).

4. Flexible hours for the university's use—26-35 semester hours. The number of flexible hours is dependent upon the number of general education courses in English, mathematics, science, and social studies that can be applied toward the major. The number of hours for a content area focus should be a minimum of 31 hours, and the total curriculum (including flexible hours) should be 120 hours.

5. Total required hours in the program 120 semester hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1785 (October 2006).

**§215. Minimum Requirements for Approved Regular Education All-Level Programs for Grades K-12: Adopted November 2003; Effective August 1, 2005**

A. General Education—A minimum of 30 semester hours of credit designed to develop a broad cultural background. The work must be taken in the following five areas.

English	6 semester hours
Mathematics	6 semester hours
Sciences	9 semester hours
Social Studies	6 semester hours
Arts	3 semester hours

**B. Focus Area**

Art	28 semester hours of Art coursework
Dance	31 semester hours of Dance coursework
Health and Physical Education	31 semester hours of Health and Physical Education coursework
Vocal Music	31 semester hours of Vocal Music coursework
Instrumental Music	31 semester hours of Instrumental Music coursework
Vocal and Instrumental Music	50 semester hours vocal and instrumental music coursework
Foreign Language	31 semester hours of the language (If French, at least 12 hours must be earned through a two (2) semester residence in a university abroad or through two (2) summers of intensive immersion study on a Louisiana campus, an out-of-state university, or abroad)

C. Knowledge of the Learner and the Learning Environment—18 semester hours.

1. Coursework should address needs of the regular and exceptional child and certification grade categories PK-3, 1-5, 4-8, and 6-12:

- a. child development;
- b. adolescent psychology;
- c. educational psychology;
- d. the learner with special needs;

- e. classroom organization and management;
- f. multicultural education.

D. Methodology and Teaching—18 semester hours.

Reading	3 semester hours
Teaching methodology	6 semester hours
Student teaching	9 semester hours
Flexible hours for university use	4-26semester hours
Total required hours in the program	120 semester hours

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1786 (October 2006).

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel  
Louisiana Teacher Preparation Programs**

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

This policy revision of Louisiana traditional teacher preparation programs will allow the following reductions: (1) require fewer "flexible credit hours" for the grades PK-3, 1-5, 4-8, and K-12 baccalaureate programs which will decrease the total minimum credit hours from 124 to 120; and (2) Eliminate the secondary focus areas (e.g., minor with 19 credit hours) in the grades 6-12 baccalaureate programs and only require the primary focus areas (major with 31 or more credit hours). The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#057

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Definitions of Schools and Early Childhood Programs (LAC 28:LXXIX.107, 115, 905, 2103, and 3303)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §107. School Approval, §115. Early Childhood/Pre-Kindergarten/Kindergarten, §905. Age Requirements, §2103. Minimum Time Requirements, and §3303. Definitions. These revisions change the definition of a school and provide a definition of early childhood programs as required by federal guidelines. These changes will allow children who qualify to receive services from federal programs.

#### Title 28

#### EDUCATION

#### Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators

#### Chapter 1. Operation and Administration

#### §107. School Approval

A. In order to benefit from state and federal funds, each approved school shall meet and maintain the following standards:

1. the school must have a state approval classification;
2. the school must be in compliance with Brumfield vs. Dodd; and
3. the school must be a nonprofit institutional day or residential school that provides elementary education, secondary education, or both.

B. A school which does not meet these standards may not hold any classification category listed in this section and may not benefit from state and federal funds. This requirement applies to schools submitting an initial application for school approval and schools which are currently approved.

C. Each state-approved nonpublic school receiving state and/or federal funds shall permit all colleges, universities and branches of the military to have equal access to the schools for the purpose of recruitment.

D. When applying to the State Department of Education for a classification category, all nonpublic schools seeking state approval shall include all grades/programs taught at the school.

1. Classification Categories. Schools shall be classified according to the following categories.

a. Approved (A)—school meets all standards specified in Standards for Approval of Nonpublic Schools.

b. Provisionally Approved (PA)—school has some deficiencies in standards, such as: class size and number(s) of the faculty teaching in an area of which qualifications specified are not met, etc.

c. Probationally Approved (P)—school has one or more of the following deviations from standards:

i. principal does not hold a master's degree or principalship certification;

ii. non-degreed teacher with fewer than five years teaching experience is employed;

iii. school has been on provisional approval for the previous two years for the same deficiency.

d. Unapproved (U)—school maintains any of the above-mentioned deviations from standards which placed it in the probationally approved category the preceding year. A school may not maintain a probationally approved category for two consecutive years. A school which loses annual school approval shall become ineligible for state and federal funding.

E. The Department of Education shall submit to the SBESE a yearly report recommending the classification status of the nonpublic schools in accordance with the nonpublic school standards.

F. After the Annual School Reports are submitted by the State Department of Education to the State Board of Elementary and Secondary Education (SBESE) for approval, all nonpublic schools seeking to change their classification category must submit their request to the SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2342 (November 2003), amended LR 31:3073 (December 2005), LR 36:

#### §115. Early Childhood/Pre-Kindergarten/Kindergarten

A. The local educational governing authority shall have the option of establishing an early childhood program, a pre-kindergarten and/or kindergarten program on a half-day or full-day schedule.

B. The early childhood program and/or pre-kindergarten program shall be listed on the annual school report when operated as a developmental program(s) within the total school program or when operated as separate program(s).

C. The term *early childhood* includes developmental programs for children ages 3-4, the minimum age being a child's third birthday. Children in early childhood programs are eligible to enter pre-kindergarten and kindergarten at the established age requirement for each program.

D. The term *pre-kindergarten* includes developmental programs for children. The minimum age for pre-

kindergarten shall be one year younger than the age requirement for that child to enter kindergarten.

E. Early childhood programs and pre-kindergarten programs may be operated as part of an approved elementary school program in conjunction with other grades or may be operated solely as an approved early childhood programs and/or pre-kindergarten program. These approved programs are considered to be elementary schools.

F. Non-public schools are not required to offer early childhood programs and/or pre-kindergarten programs nor are children required to attend these programs.

G. Any other program which operates in a school as a childcare program shall follow the day care standards as prescribed by the appropriate state agency and is not to be listed on the annual school report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2343 (November 2003), amended LR 31:3073 (December 2005), LR 36:

## **Chapter 9. Student Services**

### **§905. Age Requirements**

A. The minimum age for early childhood programs shall be a child's third birthday.

B. The minimum age for pre-kindergarten shall be one year younger than the age requirement for that child to enter kindergarten.

C. The minimum age for kindergarten shall be one year younger than the age requirement for that child to enter first grade.

D. Each school system and/or independent school may adopt by rule and enforce ages for entrance into first grade in school. It is recommended that a child entering first grade be six years of age on or before September 30 of that school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2348 (November 2003), amended LR 31:3078 (December 2005), LR 36:

## **Chapter 21. Curriculum and Instruction**

### **Subchapter B. Elementary Program of Studies**

#### **§2103. Minimum Time Requirements**

A. Early Childhood Programs/Pre-Kindergarten/Kindergarten

1. The early childhood, pre-kindergarten, and/or kindergarten elementary school grades should be planned to meet the developmental needs of young children and should be informal in nature, with teacher-directed and student-initiated activities.

2.a. - 3.b. ...

B. Elementary Schools

1. Nonpublic elementary schools first through eighth grades shall devote no less than 50 percent of the school day to the skill subjects: reading, language arts, and mathematics. The remainder of the school day shall be devoted to social studies, science, health and physical education, and electives such as religion, foreign languages, and visual and performing arts.

2. - 6.m. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2349 (November 2003), amended LR 31:3080 (December 2005), LR 34:229 (February 2008), LR 36:

## **Chapter 33. Glossary**

### **§3303. Definitions**

\* \* \*

*Early Childhood Programs*—developmental programs for children ages 3-4, the minimum age being a child's third birthday. Children in early childhood programs are eligible to enter pre-kindergarten and kindergarten at the established age requirement for each program.

\* \* \*

*Elementary School*—a school composed of any span of grades early childhood, pre-kindergarten, and/or kindergarten through the eighth grade.

\* \* \*

*Pre-kindergarten*—developmental programs for children who are no more than one year younger than the age established for kindergarten.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:230 (February 2008), LR 36:

### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? no

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No

3. Will the proposed Rule affect the functioning of the family? No

4. Will the proposed Rule affect family earnings and family budget? No

5. Will the proposed Rule affect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

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

**RULE TITLE: Nonpublic Bulletin 741—Louisiana  
Handbook for Nonpublic School  
Administrators—Definitions of Schools  
and Early Childhood Programs**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The revisions to Sections 107, 115, 905, 2103, and 3303 of *Bulletin 741: Louisiana Handbook for Nonpublic School Administrators* change the definition of a school and provide a definition of early childhood programs as required by federal guidelines. These changes will allow children who qualify to receive services from federal programs. These changes will not result in an increase in costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs or economic benefits to schools or school districts.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#060

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Professional Staff Development (LAC 28:LXXIX.305)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators: §305. Professional Staff Development*. This revision changes the professional development requirement for nonpublic school teachers from an indeterminate number of faculty meetings to two full days of professional development. This change reflects what is currently occurring in most nonpublic schools and aligns with what is required for public schools.

**Title 28  
EDUCATION**

**Part LXXIX. Nonpublic Bulletin 741—Louisiana  
Handbook for Nonpublic School  
Administrators—Programs of Study**

**Chapter 3. Certification of Personnel  
§305. Professional Staff Development**

A. A minimum of two days of professional development shall be held each school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2344 (November 2003), amended LR 31:3075 (December 2005), LR 36:

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

- 1. Will the proposed Rule affect the stability of the family? No
- 2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No
- 3. Will the proposed Rule affect the functioning of the family? No
- 4. Will the proposed Rule affect family earnings and family budget? No
- 5. Will the proposed Rule affect the behavior and personal responsibility of children? No
- 6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

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

**RULE TITLE: Nonpublic Bulletin 741—Louisiana  
Handbook for Nonpublic School  
Administrators—Professional Staff Development**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The revision to Section 305 of *Bulletin 741: Louisiana Handbook for Nonpublic School Administrators* changes the professional development requirement for nonpublic school teachers from an indeterminate number of faculty meetings to two full days of professional development. These changes will not result in an increase in costs or savings to state or local governmental units. Nonpublic schools are already required to have 180 days in the school calendar of which 175 must be devoted to instruction. Two of the extra days can be devoted to professional development.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs or economic benefits to schools or school districts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#061

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Programs of Study (LAC 28:LXXIX.2109 and 2323)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Programs of Study*: §2109. High School Graduation Requirements and §2323. Mathematics. These revisions change the name of a math course.

**Title 28  
EDUCATION**

**Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Programs of Study**

**Chapter 21. Curriculum and Instruction  
Subchapter C. Secondary Schools**

**§2109. High School Graduation Requirements**

A. - D.4. ...

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following:

1. english—4 units, shall be English I, II, III, and IV;
2. mathematics—4 units, shall be:
  - a. algebra I (1 unit) or algebra I-Pt. 2;
  - b. geometry;
  - c. algebra II;
  - d. the remaining unit shall come from the

following: financial mathematics, math essentials, advanced mathematics I, advanced mathematics II, pre-calculus, calculus, probability and statistics, discrete mathematics, or a locally-initiated elective approved by BESE as a math substitute.

E.3. - F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008), LR 36:

**Chapter 23. High School Program of Studies**

**§2323. Mathematics**

A. Effective for 2009-2010 incoming freshmen, four units of mathematics shall be required for graduations. All students must complete the following:

1. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);
2. geometry;
3. the remaining units shall come from the following:

- a. algebra II;
- b. financial mathematics;
- c. math essentials;
- d. advanced mathematics I;
- e. advanced mathematics II;
- f. pre-calculus;
- g. calculus;
- h. probability and statistics;
- i. discrete mathematics; or
- j. a locally-initiated elective approved by BESE as a math substitute.

B. Three units of mathematics are required for graduation. Effective for incoming freshmen between 2005-2006 and 2008-2009, all students must:

1. complete one of the following:
  - a. algebra I (1 unit); or
  - b. algebra I-pt. 1 and algebra I-pt. 2 (2 units); or
  - c. integrated mathematics I (1 unit);
2. the remaining unit(s) shall come from the following:
  - a. integrated mathematics II;
  - b. integrated mathematics III;
  - c. geometry;
  - d. algebra II;
  - e. financial mathematics;
  - f. advanced mathematics I;
  - g. advanced mathematics II;
  - h. pre-calculus;
  - i. calculus;
  - j. probability and statistics;
  - k. discrete mathematics.

C. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E):

1. introductory algebra/geometry (E);
2. algebra I-part 1 (E);
3. algebra I-part 2;
4. integrated mathematics I (E);
5. integrated mathematics II;
6. integrated mathematics III;
7. applied mathematics 1 (E);
8. applied mathematics II;
9. applied mathematics III;
10. algebra I (E);
11. geometry;
12. algebra II;
13. financial mathematics;
14. advanced mathematics I;
15. advanced mathematics II;
16. pre-calculus;
17. calculus;
18. probability and statistics; and
19. discrete mathematics.

Course Title	Unit(s)
Advanced Mathematics I	1
Advanced Mathematics II	1
Algebra I	1
Algebra I-Part I	1
Algebra I-Part II	1
Algebra II	1
Calculus	1

Course Title	Unit(s)
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I	1
Integrated Mathematics II	1
Integrated Mathematics III	1
Pre-Calculus	1
Probability and Statistics	1
Math Essentials	1

D. Financial mathematics may be taught by the Business Education Department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 30:2776 (December 2004), LR 31:3086 (December 2005), LR 34:2101 (October 2008), LR 36:

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Programs of Study**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The revisions to Sections 2109 and 2323 of Bulletin 741: Louisiana Handbook for Nonpublic School Administrators change the name of a math course. These changes will not result in an increase in costs or savings to state or local governmental units.

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

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

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

There will be no costs or economic benefits to schools or school districts.

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

There will be no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1008#062

H. Gordon Monk  
Legislative Fiscal Office  
Legislative Fiscal Officer

### NOTICE OF INTENT

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

Go Grant Program Changes  
(LAC 28:IV.Chapter 12)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking will change the methodology to determine eligibility to participate in the GO Grant Program to provide that a student is eligible for a GO Grant if he is eligible for and is receiving a federal Pell grant or a financial need grant and to provide that the Board of Regents sets the maximum award amount to students based on the appropriation by the legislature for the academic year.

#### Title 28

#### EDUCATION

#### Part IV. Student Financial Assistance—Higher Education

#### Scholarship and Grant Programs

#### Chapter 12. Louisiana GO Grant

#### §1203. Definitions

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

\*\*\*

*Education Allowance*—repealed.

*Education Cost Gap (ECG)*—repealed.

*Education Cost Gap (ECG) Threshold*—repealed.

\*\*\*

*Financial Need*—the student's costs of attendance minus the expected family contribution (EFC) and minus the student's federal Pell grant.

\*\*\*

*Louisiana Basic College Costs (LBCC)*—repealed.

\*\*\*



AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2615 (December 2007), amended LR 34:236 (February 2008), LR 35:647 (April 2009), LR 35:2349 (November 2009), LR 36:

#### **§1205. Application and Initial Eligibility**

A. - B.2. ...

3. have financial need; and

B.4.a. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:

#### **§1207. Continuing Eligibility**

A. - B.1. ...

2. The student must still have financial need.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009), LR 36:

#### **§1211. Responsibilities of Eligible Louisiana Institutions**

A. - C.2.d. ...

3. the payment request shall include the social security number, college code, term, date, hours attempted, award amount, and amount requested for each student.

C.4. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2349 (November 2009), LR 36:

#### **§1213. Responsibilities of LOSFA**

A. - B. ...

C. LOSFA shall maintain a database of all students who have received the GO Grant, included social security number, college code, term, date, hours attempted, award amount, annual amount received, and aggregate amount received. In the event LOSFA receives a payment request in an amount that would exceed the student's eligibility, LOSFA will pay only that amount that will not exceed the student's eligibility.

D. Adequacy of Funding

1. After the receipt of fall semester or term payment requests, but no later than October 15 of each year, LOSFA shall determine whether sufficient funds are available to pay all anticipated awards for subsequent semesters, terms and sessions of the academic year.

2. In the event projections indicate sufficient funds are not available, LOSFA shall notify the Board of Regents.

3. LOSFA will provide to the Board of Regents information that is necessary to determine appropriate funding amounts upon the request of the Board of Regents.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2350 (November 2009), LR 36:

#### **§1217. Responsibilities of the Board of Regents**

A. At least on an annual basis, the Board of Regents shall review the amount appropriated for this program, and based on that figure, determine the maximum amount to be received by students attending school on a full-time, half-time, and less than half-time basis, and it shall provide notice to LOSFA of that amount.

B. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3046 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:2350 (November 2009), LR 36:

#### **Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq. (SG10122NI)

#### **Public Comments**

Interested persons may submit written comments on the proposed changes (SG10122NI) until 4:30 p.m., September 9, 2010, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

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

##### **RULE TITLE: Go Grant Program Changes**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rulemaking will change the methodology to determine eligibility to participate in the GO Grant Program to provide that a student is eligible for a GO Grant if he is eligible for and is receiving a federal Pell grant or a financial need grant and to provide that the Board of Regents sets the maximum award amount to students based on the appropriation by the legislature for the academic year. Adoption of the proposed rule will not result in any additional costs to the state or local governments.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

The proposed rulemaking by itself will not change the Go Grant Program in a way that would have an impact on a student's financial aid package for postsecondary education. The Louisiana Office of Student Financial Assistance and the Board of Regents have a memorandum of understanding giving authority to the Board of Regents to prepare a plan to limit Go

Grant awards to amounts appropriated by the Legislature. These proposed rules formalize and codify the method Regents will use to address shortfalls in funding of Go Grants in Fiscal Year 2010-11 and thereafter.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These changes by itself will have no impact on competition or employment.

George Badge Eldredge  
General Counsel  
1008#074

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Scholarship/Grant Programs—2010 Legislation  
(LAC 28:IV.301, 701, 703, 705, 801, 803, 1901, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking implements Acts 201, 641, 724 and 758 of the 2010 Regular Session of the Louisiana Legislature. These Acts authorize an increase the book allowance and Taylor Opportunity Program for Students (TOPS) Performance and Honors stipends for members of the National Guard; provides a book allowance for members of the National Guard with the TOPS Tech Award; allow students to qualify for the TOPS Tech award with a silver level score on the assessments of the ACT WorkKeys system; allow use of the TOPS Opportunity, Performance and Honors Awards at certain proprietary and cosmetology schools; and changes the TOPS Core Curriculum requirements for the Opportunity, Performance and Honors Awards from 17.5 to 19 units beginning with students graduating in 2014.

**Title 28  
EDUCATION**

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

**Chapter 3. Definitions**

**§301. Definitions**

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

\*\*\*

*Average Award Amount (TOPS-Tech)*—is applicable to those students awarded the TOPS-Tech and TOPS Opportunity, Performance, and Honors Awards who attend a regionally accredited independent college or university in Louisiana that is a member of the Louisiana Association of Independent Colleges and Universities or who attend an eligible cosmetology or proprietary school and are enrolled in a vocational, technical education certificate or diploma program or non-academic undergraduate degree program, and is determined by dividing the total dollar value of awards, which are made to students enrolled in the same

types of programs in the prior program year (non-academic program) at eligible public colleges and universities that do not offer academic degrees at the baccalaureate level, by the total number of students that received the awards. To ensure that the average award amount (TOPS Tech) is not reduced for students during program year (non-academic program) 2006-2007 because of the adverse affects of Hurricanes Katrina and Rita on student enrollment, the average award amount (TOPS Tech) for program year (non-academic program) 2006-2007 shall be the same as calculated for program year (non-academic program) 2005-2006.

*Award Amount*—an amount equal to tuition at the school attended, for those students attending a Louisiana public college or university, as determined by the commission, which may be used by the student to pay any educational expense included in that student's "Cost of Attendance." The amount paid for TOPS and TOPS-Tech Awards shall be as follows.

\*\*\*

d. For students with the TOPS Opportunity, Performance, and Honors Award attending a regionally accredited independent college or university in Louisiana that is a member of the Louisiana Association of Independent Colleges and Universities or who attend an eligible cosmetology or proprietary school and enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree, the amount shall equal the average award amount (TOPS-Tech).

\*\*\*

*Eligible Colleges or Universities*—Louisiana public colleges or universities and regionally accredited independent colleges or universities in the state that are members of the Louisiana Association of Independent Colleges and Universities; for recipients of the TOPS Tech Award only, beginning with the 2009-2010 Academic Year (college), and for recipients of the TOPS Tech, Opportunity, Performance and Honors Award, beginning with the 2010-2011 academic year (college), any school that has a valid and current certificate of registration issued by the State Board of Cosmetology in accordance with law and that is accredited by an accrediting organization recognized by the United States Department of Education and any proprietary school that has a valid and current license issued by the Board of Regents in accordance with law and that is accredited by an accrediting organization recognized by the United States Department of Education.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

**HISTORICAL NOTE:** Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36

(January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010). LR 36:

**Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards**

**§701. General Provisions**

A. - E.3.b. ...

4.a. Through the 2009-2010 Academic Year (college), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus any applicable TOPS stipend and a sum of not more than \$150 per semester or \$300 annually for the actual cost of books and other instructional materials.

b. Beginning with the 2010-2011 academic year (College), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students with the TOPS Opportunity, Performance and Honors Award participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus a sum of \$300 per semester or \$600 per academic year to be applied toward the cost of books and other instructional materials. In addition, those students with the Performance Award shall receive \$400 per semester or \$800 per academic year for other educational expenses and those students with the Honors Award shall receive \$800 per semester or \$1,600 per academic year for other educational expenses.

E.5 - G.2. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1645-1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999), LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26:1995 (September 2000), LR 26:2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003), LR 29:2372 (November 2003), LR 30:1161 (June 2004), LR 31:2213 (September 2005), LR 35:228 (February 2009), LR 36:

**§703. Establishing Eligibility**

A. - A.5.a.i(d) ...

\* \* \*

(e). beginning with the graduates of academic year (high school) 2007-2008 through 2012-13, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV

Units	Course
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
1	Geometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among the following math subjects: Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Mathematics I [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Pre-Calculus], Advanced Mathematics II [beginning with the 2008-2009 academic year (high school) this course is renamed Advanced Math – Functions and Statistics], Integrated Mathematics III or the following science subjects: Biology II, Chemistry II, Physics or Physics II
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit, nonpublic)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
½	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Database Design and Programming (1/2 or 1 credit) Database Programming with PL/SQL (1/2 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Digital Media I (1/2 or 1 credit) Digital Media II (1/2 or 1 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Java Programming (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(f). beginning with the graduates of academic year (high school) 2013-14, at the time of high school

graduation, an applicant must have successfully completed 19 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
2	Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Math – Pre-Calculus, Advanced Math – Functions and Statistics, Integrated Mathematics III
1	Biology
1	Chemistry
2	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit)
1	American History
2	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit)
1	Fine Arts Survey; (or substitute 2 units performance courses in music, dance, or theater; or 2 units of studio art or visual art; or 1 elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

A.5.a.ii.(a). - J.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:

### §705. Maintaining Eligibility

A. - A.6.b. ...

c. in an academic graduate or professional program at an eligible college or university, by the end of each academic year (college), earn at least the total college credit hours required by the college or university for full time enrollment for each semester or quarter as determined by totaling the earned hours reported by the institution for each semester or quarter in the academic year (college). These hours shall not include hours earned during qualified summer sessions, summer sessions nor intersessions nor by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required

number of hours will result in permanent cancellation of the recipient's eligibility; or

d. in an eligible cosmetology or proprietary school, meet the federal grant aid steady academic progress requirement at that school; and

A.7. - A.8.c. ...

d. the minimum grade necessary to maintain good standing, if enrolled in a graduate or professional program; or

e. meet the federal grant aid steady academic progress requirement at that school, if enrolled in an eligible cosmetology or proprietary school; and

A.9 - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:437 (March 2007), LR 34:1390 (July 2008), LR 36:491 (March 2010), LR 36:

## Chapter 8. TOPS-Tech Award

### §801. General Provisions

A. - D.2. ...

3. Beginning with the 2010-2011 academic year (College), in lieu of the amount equal to tuition as provided by LAC 28:IV.701.E.1-3, students with the TOPS Tech Award participating in the program provided by R.S. 29:36.1 for persons serving in the Louisiana National Guard shall receive the tuition exemption as provided therein, plus a sum of \$300 per semester or \$600 per program year (nonacademic program to be applied toward the cost of books and other instructional materials.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 26:1997 (September 2000), repromulgated LR 27:1854 (November 2001), LR 36:

### §803. Establishing Eligibility

A. - A.5.d.iii. ...

6. if qualifying under the terms of §803.A.5.a., at the time of high school graduation:

a. have successfully completed one of the following core curriculums:

i. high school course work constituting the TOPS core curriculum for the Opportunity, Performance and Honors Awards as defined in §703.A.5. and documented on the student's official transcript as approved by the Louisiana Department of Education; or

A.6.a.ii. - A.6.b. ...

7. have achieved an *ACT score*, as defined in §301, of at least:

a. if qualifying under §803.A.5.a, an ACT composite score of at least 17 or beginning with the 2010-2011 program year (non academic program) in the

alternative, have attained a silver level score on the assessments of the ACT WorkKeys system; or

A.7.b.i. - B.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 36:491 (March 2010), LR 36:

## **Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions**

### **§1901. Eligibility of Post-Secondary Institutions to Participate**

A. - E. ...

F. Eligible cosmetology and proprietary schools may participate in TOPS for all awards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 30:784 (April 2004), LR 31:3111 and 3114 (December 2005), LR 35:235 (February 2009), LR 35:1490 (August 2009), LR 36:

### **§1903. Responsibilities of Post-Secondary Institutions**

A. - B.5. ...

6. upon the school's certification that a recipient of a TOPS Opportunity, Performance or Honors Award is enrolled full-time, institutions shall bill for and LASFAC will reimburse the institution for each such recipient as follows:

B.6.a. - h. ...

i. for students enrolled in eligible cosmetology and proprietary schools, institutions may bill for an amount of up to one quarter of the annual *average award amount (TOPS-Tech)*, as defined in §301;

B.7. - D.5.b. ...

D.6. for TOPS Awards at cosmetology or proprietary schools:

a. verify the student has continued to make steady academic progress; and

b. verify the student is enrolled full time on the billing date.

E. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR

27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1233 (July 2009), LR 35:1490 (August 2009), LR 35:1491 (August 2009), LR 36:

### **Family Impact Statement**

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in LSA-R.S. 49:972.

### **Small Business Statement**

The proposed Rule will have no adverse impact on small businesses as described in LSA-R.S. 49:965.2 et seq. (SG10120NI)

### **Public Comments**

Interested persons may submit written comments on the proposed changes (SG10120NI) until 4:30 p.m., September 9, 2010, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Scholarship/Grant Programs—2010 Legislation**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Act 201 of the 2010 Regular Session of the Louisiana Legislature increased the book allowance from \$300 to \$600 a year for members of the National Guard who are eligible for a Taylor Opportunity Program for Students (TOPS) Honors, Performance and Opportunity Award and provides for a book allowance for members of the National Guard with the TOPS Tech Award. It also increased the stipends for members of the National Guard with the TOPS Performance Award from \$400 to \$800 and the TOPS Honors Award from \$800 to \$1,600 per year. It is estimated that this proposed change to implement this act will increase TOPS program expenditures by \$20,412 for the 2010-11 state fiscal year and \$17,100 for subsequent years. Act 647 allows students to qualify for the TOPS Tech Award with a silver level score on the ACT WorkKeys Assessment as an alternative to the requirement to earn a composite score of 17 on the ACT. It is estimated that this proposed change to implement this act will increase TOPS program expenditures by \$3,312 for the 2010-11 state fiscal year, \$12,232 for 2011-12 and \$21,903 for 2012-13. Act 724 authorizes the use of the TOPS Opportunity, Performance and Honors Awards at certain cosmetology and proprietary schools beginning with the 2010-2011 academic year. It is estimated that this proposed change to implement this act will decrease TOPS program expenditures by \$34,248 for the 2010-11 state fiscal year, \$64,903 for 2011-12 and \$104,665 for 2012-13 if certain student enrollment behavior is realized. The net effect of these proposed changes should be a cost savings in TOPS Awards of \$10,524 for state fiscal year 2010-11, \$35,571 for 2011-12 and \$65,662 for 2012-13. The rest of the proposed changes in this rulemaking should not have a significant impact on program costs.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

Additional students will qualify for a TOPS Tech award and many will attend an in-state school to further their education and remain in Louisiana upon completion of their education. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Financial aid provided by TOPS make it easier for students to seek post-secondary education. These changes provide additional resources to certain students, make it easier to qualify for a TOPS Tech award, and provide more educational options by including cosmetology and proprietary schools for TOPS Opportunity, Performance and Honors Award students. Any increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge  
General Counsel  
1008#075

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary**

Miscellaneous Amendments and Corrections  
(LAC 33:I.903, 1905, 1909, 1911, and 3925; III:502; V.109, 4489, and 4901; VII:303; and XV:588)(MM013)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection regulations, LAC 33:I.903, 1905, 1909, 1911, and 3925; III:502; V.109, 4489, and 4901; VII:303; and XV:588 (MM013).

This Rule corrects errors that have been found in the Environmental Quality regulations. Language found to be unclear has been clarified, grammatical errors have been corrected, some wording as been restructured, and instances of improper regulation citations have been corrected.

Maintenance of the regulations is part of the responsibility of the department. An aspect of maintenance is for the department to correct errors when they are found. The basis and rationale of this Rule is to maintain the regulations that protect the environment and public health of the state, as authorized by the Environmental Quality Act. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY  
Part I. Office of the Secretary**

**Subpart 1. Departmental Administrative Procedures  
Chapter 19. Facility Name and Ownership/Operator  
Changes Process**

**§1903. Liability**

A. ...

B. The previous owner or operator retains responsibility for compliance with the financial requirements until the new owner or operator has demonstrated that he or she is complying with the specified financial requirements of Title 33 of the Louisiana Administrative Code (e.g., LAC 33:V.Chapter 37, LAC 33:VII.Chapter 13, and LAC 33:IX.Chapter 67 and Section 7307).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005), LR 36:

**§1905. Name Change**

A. - B. ...

C. For permitted hazardous waste facilities, the permittee shall send a notice of the name change to all persons on the facility mailing list maintained by the administrative authority, and to the appropriate units of state and local government, as specified in LAC 33:V.717. This notification shall be made within 90 calendar days after the change is effective.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005), LR 36:

**§1909. Change of Ownership/Operator—Financial Assurance Required**

A. - B.2. ...

3. When a transfer of ownership or operational control occurs, the previous owner or operator shall comply with the applicable requirements of LAC 33:V.Chapter 37 (hazardous waste financial requirements), LAC 33:VII.Chapter 13 (solid waste financial assurance requirements), and LAC 33:IX.Chapter 67 (water financial security requirements) and Section 7307 (sewage sludge financial assurance requirements) until the new owner or operator has demonstrated that he or she is complying with the applicable requirements of LAC 33:V.Chapter 37, LAC 33:VII.Chapter 13, and LAC 33:IX.Chapter 67 and Section 7307.

C. The new owner or operator shall demonstrate compliance with the applicable requirements of LAC 33:V.Chapter 37, LAC 33:VII. Chapter 13, and LAC 33:IX.Chapter 67 and Section 7307 within six months of the date of the change of ownership or operational control of the facility. Upon adequate demonstration to the administrative authority by the new owner or operator of compliance with these financial assurance requirements, the administrative authority shall notify the previous owner or operator that he or she no longer needs to comply with the financial assurance requirements as of the date of demonstration.

D. ...

E. For permitted hazardous waste facilities, the new permittee shall send a notice of the change of ownership or operational control to all persons on the facility mailing list maintained by the administrative authority, and to the appropriate units of state and local government, as specified in LAC 33:V.717. This notification shall be made within 90 calendar days after the administrative authority has provided a written response approving the transfer of the permit and the change has been put into effect.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005), LR 36:

**§1911. Fees for Name and Ownership/Operator Changes**

A. Notifications of name or ownership/operator changes at a facility shall be submitted by the new owner or operator with the appropriate fees. The fees listed below cover the cost of reviewing, evaluating, and processing a name or ownership/operator change that has occurred at the facility.

Name and Ownership/Operator Change Fees	
Program	LAC Citation for Fee
Air	LAC 33:III.223, Fee Number 2000
Hazardous Waste	LAC 33:V.5123.A
Solid Waste: Type I, I-A, II, and II-A Facilities	LAC 33.VII.1501.C (N/A for name change alone)
Solid Waste: Type III Facilities or Beneficial Use Facilities	LAC 33.VII.1501.D (N/A for name change alone)
LPDES	LAC 33:IX.1309.D.4 (N/A for name change alone)

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005), amended LR 35:2178 (October 2009), LR 36:

Subpart 2. Notification

**Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges**

**Subchapter D. Procedures for Notifying the Department**

**§3923. Notification Procedures for Other Regulatorily Required Reporting**

A. - B. ...

C. The party who is required to give prompt notification shall provide the following information, as applicable:

C.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 36:1240 (June 2010), LR 36:

**§3925. Written Notification Procedures**

A. Written reports for any unauthorized discharge that requires notification under LAC 33:I.3915.A, 3917, 3919, or 3923 shall be submitted by the discharger to SPOC in accordance with this Section within seven calendar days after the expiration of the time allowed for the notification required by LAC 33:I.3915.A, 3917, 3919, or 3923, unless otherwise provided for in a valid permit or other department regulation.

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000),

LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 33:2628 (December 2007), LR 36:1240 (June 2010), LR 36:

**Part III. Air**

**Chapter 5. Permit Procedures**

**§502. Definitions**

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

\* \* \*

*Title I Modification*—any physical change or change in the method of operation of a stationary source which increases the amount of any regulated air pollutant emitted or which results in the emission of any regulated air pollutant not previously emitted and which meets one or more of the following descriptions.

a. ...

b. The change will result in a significant net emissions increase under the *Prevention of Significant Deterioration (PSD) Program*, as defined in LAC 33:III.509.B.

c. - d. ...

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Wastes that are excluded from regulation are found in this Section.

A. Notification of Hazardous Waste Activity

1. Within 90 days after the promulgation of these regulations anyone subject to these regulations who has not previously notified the department on the Notification of Hazardous Waste Activity Form HW-1, or whose notification on Form HW-1 is not approved, must notify the Office of Environmental Services, using Form HW-1.

2. Within 90 days after changes in waste characteristics or changes in these regulations that result in

changes in the notification, interim status facilities must revise their notification form by resubmitting a corrected copy of Form HW-1.

3. All notifications received must be in accordance with EPA notification procedures and must receive an EPA identification number issued through the state of Louisiana.

4. All facilities with an active EPA identification number shall be subject to requirements in LAC 33:V.Subpart 1.

B. - P.2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:

### **§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators**

A. - F.5. ...

G. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kg of hazardous waste during a calendar month to be excluded from full regulation under this Section, the generator must comply with the following requirements:

G.1. - G.3.g. ...

4. notify the department in accordance with LAC 33:V.105.A.1; and

G.5. - J. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:

### **§109. Definitions**

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

\*\*\*

*Solid Waste*—

1.a - 4.c.iii. ...

5. Materials That Are Not Solid Waste When Recycled

a. - b.ii. ...

iii materials accumulated speculatively; or

iv. inherently waste-like materials listed in Paragraph 4 of this definition;

6. respondents in actions to enforce regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so:

Table 1. - Zone of Engineering Control. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq and specifically 2180.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), LR 36:



**Chapter 41. Recyclable Materials**

**§4143. Recyclable Materials Utilized for Precious Metal Recovery**

- A. - B.1. ...
- 2. generators shall operate in accordance with LAC 33:V.1107, 1108 and 1109.F;
- 3. ...
- 4. persons who store shall operate in accordance with LAC 33:V.1516.B and C; and

B.5 - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 36:

**Chapter 43. Interim Status**

**Subchapter L. Land Treatment**

**§4489. Closure and Post-Closure**

A. - E. ...

F. In addition to the requirements of LAC 33:V.4389, during the post-closure care period the owner or operator of a land treatment unit must:

- 1. continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;
- 2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:1006 (June 2008), LR 36:

**Chapter 49. Lists of Hazardous Wastes**

[Comment: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

**§4901. Category I Hazardous Wastes**

A. - B.1. ...

NOTE: EPA, in January 1985, added new listed hazardous wastes.

Table 1. Hazardous Wastes from Nonspecific Sources		
F037	(T)	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators, tanks and impoundments, ditches and other conveyances sumps, and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in LAC 33:V.4901.B.2.b (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units), and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under LAC 33:V.105.D.1.1, if those residuals are to be disposed of.
* * *		
(See Prior Text in F038 though F039)		

\* (I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

B.2. - G.Table 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007), LR 34:635 (April 2008), LR 34:1020 (June 2008), LR 34:2392 (November 2008), LR 36:

**Part VII. Solid Waste**

**Subpart 1. Solid Waste Regulations**

**Chapter 13. Financial Assurance for all Processors and Disposers of Solid Waste**

**§1303. Financial Responsibility for Closure and Post-Closure Care**

A. - C.9. ...

D. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

Table 1. Hazardous Wastes from Nonspecific Sources				
Industry and EPA Hazardous Waste Number	Hazard Code	Hazardous Waste		
* * *				
(See Prior Text in F001 through F035)				

1. - 7. ...

8. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:VII.1399.Appendix E, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

E. - L.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2154.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1090 (June 2007), amended LR 33:2154 (October 2007), LR 36:

### **Part XV. Radiation Protection**

#### **Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

##### **Subchapter C. Precautionary Procedures in Radiographic Operations**

##### **§588. Documents and Records Required at Temporary Job Sites and Applicable Field Stations**

A. Each licensee or registrant conducting industrial radiography at a temporary job site or applicable field station shall have the following documents and records available at that job site or field station for inspection by the department:

1. - 3. ...

4. survey records required pursuant to LAC 33:XV.472 and 587. E for the period of operation at the site;

5. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2772 (December 2000), LR 27:1236 (August 2001), LR 28:1952 (September 2002), amended by the Office of Environmental Assessment, LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs, LR 36:

##### **Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

##### **Public Hearing**

A public hearing will be held on September 28, 2010, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

##### **Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by MM013. Such comments must be received no later than October 5, 2010, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to donald.trahan@la.gov. Copies of

these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of MM013. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

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

#### **RULE TITLE: Miscellaneous Amendments and Corrections**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs or savings to state or local government units as a result of the rule.

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

There is no estimated effect on revenue collections of state or local governmental units from the proposed rule.

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

No costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No significant effect on competition or employment from this proposed rule is anticipated.

Herman Robinson, CPM  
Executive Counsel  
1008#076

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Office of the Governor Auctioneers Licensing Board**

Licensing; Examination Procedure; Fees; Qualifications as Apprentice; Bonds; Funds; Advertising Violations; Continuing Education  
(LAC 46:III.1103, 1105, 1109, 1111, 1113, 1117, 1203, 1503, 1706, and 2701-2711)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:3101 that the Auctioneers Licensing Board proposes to amend its existing rules and regulations to further clarify existing rule and to take care of basic housekeeping issues.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part III. Auctioneers**

**§1103. Licensing Procedure**

A. - B13. ...

14. Louisiana sales tax number or the signed waiver on the application stating they are not responsible for collecting sales tax since it is the employer's responsibility.;

15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), amended by the Office of the Governor, Auctioneers Licensing Board, LR 31:1325 (June 2005), LR 36:

**§1105. Availability of Applications and Apprentice License**

A. Applications and all other pertinent forms are available through the board's website or will be mailed upon request of the person seeking to be licensed as an auctioneer or as an apprentice auctioneer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), amended by the Office of the Governor, Auctioneers Licensing Board, LR 31:1325 (June 2005), LR 36:

**§1109. Examination Procedure**

A. ...

B. The board shall issue a numbered license to an applicant who meets the requirements of this statute and rules, passes satisfactorily 68 percent the examination administered by the board and pays the fee to be a licensed auctioneer.

C. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112 and R.S. 37:3113.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:784 (November 1988), amended by the Office of the Governor, Auctioneers Licensing Board, LR 31:1326 (June 2005), LR 36:

**§1111. License Renewal and Penalty**

A. A license shall expire annually on December 31. Each renewal license shall be valid throughout this state from January 1 of each year to December 31 of each year. All applications for renewal of auctioneers' licenses shall be submitted to the board by November 1 of each year, and licenses shall be issued by January 10 of each year. If application of renewal of the license has not been made, the license shall expire on December 31 and it shall be illegal for any person to represent himself and act as an auctioneer thereafter. Any auctioneer who submits a renewal application after January 1 shall be subject to a late penalty of \$75, which shall be paid to the Louisiana Auctioneers Licensing Board. Any auctioneer having a previous annual license shall be presumed to be a renewal applicant unless the auctioneer has allowed the license to lapse for more than

one year from the date of renewal. If such license has lapsed for one year or more, then the auctioneer shall be charged a license restoration fee of \$100, in addition to all other applicable fees, and the auctioneer's request for reinstatement must be approved by the Louisiana Auctioneers Licensing Board at one of the board's regularly scheduled meetings. If an applicant is seeking reinstatement after the license has been expired by more than 24 months, the applicant is subject to reexamination if originally licensed for less than 5 years.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3115.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:785 (November 1988), LR 36:

**§1113. Fees**

A.1. - 9. ...

10. annual certification of a licensed auctioneer school—\$150;

11. - 13. ...

14. administrative fee of \$50.00 for Louisiana residents who are 65 or older to renew their annual license if they have been licensed for more than 5 years continuously.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3116.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:337 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:785 (November 1988), amended by the Office of the Governor, Auctioneers Licensing Board, LR 31:1326 (June 2005), LR 36:

**§1117. Qualifications for Licensing as an Apprentice Auctioneer**

A. - B.7 ...

8. a copy of the rules and regulations signed by both the apprentice and the supervising auctioneer

C. ...

D. All apprentice applicants must be approved by the Louisiana Auctioneers Licensing Board prior to licensing.

E. The prospective apprentice and his supervising Louisiana licensed auctioneer must both sign three copies of the rules and regulations governing issuance of apprentice licenses. This must be done before an apprentice license can be issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3118.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Auctioneer Licensing Board, LR 11:338 (April 1985), amended by the Department of Economic Development, Auctioneers Licensing Board, LR 14:786 (November 1988), amended by the Office of the Governor, Auctioneers Licensing Board, LR 31:1326 (June 2005), LR 36:

**Chapter 12. Bonds; Funds**

**§1203. Auctioneer Recovery Fund**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneer Licensing Board, LR 31:1327 (June 2005), repealed LR 36:

## **Chapter 15. Violations and Penalties**

### **§1503. Fines for Advertising Violations**

A. Violations of Chapter 17 requiring that the licensee place his name and license number in all advertising will result in a money fine to be levied against him. The amount of the fine will be \$50 for the first offense and \$100 for the second offense. A third or subsequent offense may result in a fine or other disciplinary action within the discretion of the board. Signs and business cards shall be exempt from this requirement of displaying the licensee number so long as the contact information is present since these are not considered ads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3119.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Auctioneers Licensing Board, LR 20:1367 (December 1994), amended LR 36:

## **Chapter 17. Responsibilities of Licensed Auctioneer**

### **§1706. Absolute Auction**

A. Absolute Auction—changes ownership regardless of price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 36:

## **Chapter 27. Continuing Education**

### **§2701. Continuing Education**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 31:1328 (June 2005), repealed LR 36:

### **§2703. Providers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 31:1328 (June 2005), repealed LR 36:

### **§2705. Application Process and Provider**

#### **Responsibilities**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 31:1328 (June 2005), repealed LR 36:

### **§2707. Revocation of Provider Status**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 31:1329 (June 2005), repealed LR 36:

### **§2709. Auctioneer Responsibilities**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 31:1329 (June 2005), repealed LR 36:

### **§2711. Continuing Education for Auction Businesses**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3112.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Auctioneers Licensing Board, LR 31:1329 (June 2005), repealed LR 36:

#### **Family Impact Statement**

The proposed amendments should not have any impact on family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and /or the ability of the family or local government to perform the function as contained in the proposed Rule.

#### **Public Comments**

Interested persons may submit written comments until 3:30 p.m., September 9, 2010, to Sandy Edmonds, Louisiana Auctioneers Licensing Board, 5222 Summa Court, Suite 352, Baton Rouge, LA 70809.

Sandy Edmonds  
Executive Assistant

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

### **RULE TITLE: Licensing; Examination Procedure; Fees; Qualifications as Apprentice; Bonds; Funds; Advertising Violations; Continuing Education**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed rule change will have no impact on state or local government expenditures.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule change will decrease revenue by approximately \$6000 annually. The proposed rule change would decrease the annual renewal fee for Louisiana resident active licensees who are over the age of 65 and have been licensed for at least 5 years continuously from \$150 to \$50.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed rule change would decrease the annual renewal fee for Louisiana resident active licensees who are over the age of 65 and have been licensed for at least 5 years continuously from \$150 to \$50.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule change will have no effect on competition or employment.

Sandy Edmonds  
Executive Assistant  
1008#051

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

### **Office of the Governor Division of Administration Patient's Compensation Fund Oversight Board**

Actuary; Annual Actuarial Study; Risk Rating; Rates;  
Surcharges (LAC 37:III.701-713)

The Patient's Compensation Fund Oversight Board, under authority of the Louisiana Medical Malpractice Act, R.S.

40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., advertises its intent to amend LAC 37:III.701-713, to clarify the Oversight Board's role in administering the Fund; to clarify the role of the Oversight Board's consulting actuary; to clarify and be consistent with recently amended statutory law the circumstances under which a reduction in the aggregate annual surcharges could be accomplished; to require the executive director to give notice of rates or rate changes via the Oversight Board's website; to provide, consistent with recently amended statutory law, that the Oversight Board determines surcharge rates in an open meeting following notice and public comment; to clarify to be consistent with statutory law that the late payment penalty will be set annually by the Oversight Board not to exceed 12 percent; to require payment of NSF charges; and to clarify time delays for certain health care providers to pay surcharges to continue PCF qualification.

#### **Title 37**

### **INSURANCE**

## **Part III. Patient's Compensation Fund Oversight Board**

### **Chapter 7. Surcharges**

#### **§701. PCF Consulting Actuary**

A. In accordance with the provisions of law applicable to contracting for personal, professional, or consulting services, the board shall retain a qualified, competent, and independent consulting actuary to advise and consult the board on all aspects of the board's administration, operation, and defense of the fund which require application of the actuarial science. Each year, the board shall cause the consulting actuary to prepare an annual actuarial study required by the Act and these rules. An individual actuary contracted by the board, or a principal actuary assigned to the engagement and employed by a partnership, firm, or corporation contracted by the board, shall possess formal education and at least a baccalaureate degree in the actuarial sciences, shall be a full member of the Casualty Actuarial Society, and shall have had substantial prior experience in providing services as a consulting actuary to insurance companies underwriting professional health care liability insurance.

B. The board's contract with a consulting actuary shall provide that the consulting actuary shall be responsible for:

1. – 2. ...

3. performing actuarial analysis of claims experience data collected and maintained by the executive director with respect to the fund, commercial professional liability insurers doing business in this state, self-insured health care providers, together, as necessary or appropriate, with regional or national professional health care liability claims experience data, and development, in consideration of the fund's allocated and unallocated expenses, its organization, administration, and legal and regulatory constraints, of a surcharge rate structure, rated and classified according to the several classes or risks against which the fund provides compensation, that shall reasonably ensure that the fund is sufficiently funded so as to be and remain financially and actuarially capable of providing the compensation for which it is organized;

4. developing, in conjunction with the executive director, proposed surcharge rates and surcharge rate

changes in accordance with the consulting actuary's actuarial analyses, for submission to the board;

5. as requested by the executive director, personal presentation of proposed surcharge rates and surcharge rate changes at meetings of the board; and

6. generally advising and consulting with the executive director on all actuarial questions affecting the board's administration, operation, and defense of the fund.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.44.D(3).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:174 (February 1992), amended LR 29:346 (March 2003), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

#### **§703. Annual Actuarial Study**

A. An actuarial study of the fund and the surcharge rate structure necessary and appropriate to ensure that it is and remains financially and actuarially sound shall be performed annually by the board's consulting actuary on the basis of an actuarial analysis of all relevant claims experience data collected and maintained by the board.

B. In the performance of the board's annual actuarial study and the development of a financially sound and appropriate surcharge rate structure for the fund, the board's consulting actuary and the executive director shall accord the greatest weight to the claims experience of the fund and of commercial professional health care liability insurance underwriters and self-insurance funds with respect to the risk underwritten by such insurers and self-insurance funds in this state and as particularly reflected in such insurers' then most recent premium rate filings with the Louisiana Department of Insurance (LDOI) or such self-insurance funds' current rate structure and supporting data, provided, however, that such data shall be viewed in light of national claims experience data and provided further that the board's consulting actuary may place reliance on national claims experience data when, in the opinion of such actuary, claims experience within the state of Louisiana as to any class of risks provides an insufficient basis for reliance thereon for purposes of actuarial analysis or in calculating indicated surcharge rates.

C. Without respect to the rate structure indicated by any annual actuarial study of the fund, no changes to surcharge rates or to the surcharge rate structure shall be approved by the board when the total assets of the fund could become less than the amount provided for in R.S. 40:1299.44(A)(6)(a) and (b).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.44.D(3).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 19:204 (February 1993), LR 24:1111 (June 1998), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

#### **§705. Risk Rating**

A. Surcharge rates collected by the board shall be based on and classified according to the classes and categories of health care liability risks underwritten by the fund with respect to each class of health care practitioners and institutions eligible for enrollment with the fund. With regard to hospitals, surcharge rates collected by the board shall be based on the annual average number of occupied

beds. Risk classifications and ratings adopted by the board shall be based on actuarial analysis of the claims experience of health care provider groups enrolled with the fund and equivalent data and practices of commercial insurance underwriters and self-insurance funds insuring such groups. Risk rating classifications for health care providers eligible for enrollment with the fund shall be based on Louisiana claims experience data, including the fund's own claims experience, unless the board's actuary affirmatively demonstrates that, as respects any class of provider, reasonably obtainable, competent, and credible Louisiana claims experience data provides an insufficient basis for such classifications under generally accepted insurance actuarial standards, in which case regional or national claims experience data and statistics relative to such classes of health care provider may be utilized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 29:346 (March 2003), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

#### **§707. Determination of Rates; Notice of Rates**

A. The board shall determine surcharge rates in a public meeting held pursuant to Louisiana's open meetings laws based upon actuarial principles and reports, experience and prudent judgment of the board. The board shall provide written or electronic notice of the meeting at least 15 days in advance of the meeting and provide an opportunity for public comment at the meeting before determining surcharge rates.

B. Within 30 days of the date on which the board determines surcharges rates or rate changes, the executive director shall give notice of such rates or rate changes via the board's website and any other means at the discretion of the executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 24:1112 (June 1998), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

#### **§709. Interim, Emergency Rates**

A. Interim or emergency surcharge rates or rate changes may be determined by the board at any time when the board, in consultation with its consulting actuary, determines that a new surcharge rate or rate changes are necessary. The board shall comply with the notice and comment provisions set forth in §707 prior to determining interim or emergency surcharge rates or rate changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

#### **§711. Payment of Surcharges: Insurers and Self-Insurance Trusts**

A. Applicable surcharges for enrollment and qualification with the fund shall be collected on behalf of the board by commercial professional health care liability

insurance companies and approved self-insurance trusts from insured health care providers electing to enroll and qualify with the fund. Such surcharges shall be collected by such insurers and trusts at the same time and on the same basis as such insurers' and trust's collection of premiums or contributions from such insureds. Surcharges collected by such insurers and trusts on behalf of the board shall be due and payable and remitted to the board by such insurers and trusts within 45 days from the date on which such surcharges are collected from any insured health care provider.

B. Annual surcharges for initial PCF coverage for insured health care providers whose surcharges are collected by insurers and trusts for enrollment and qualification with the fund shall be due and payable to the collecting insurers and trusts on or before the date of initial PCF coverage. Annual surcharges for renewal coverage due the board by insured health care providers whose surcharges are collected by insurers and trusts for enrollment and qualification with the fund shall be due and payable to the collecting insurers and trusts on or before 30 days following the expiration of the prior enrollment period. Remittance of surcharges to the board by the insurers and trusts shall be made in such form and accompanied by records in such forms or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care providers on whose behalf such surcharges are remitted. Such insurers and funds remitting surcharges to the board shall certify to the board, at the time of remitting such surcharge to the board, the date that the surcharges were collected by them from the health care providers. The payment of surcharges by an approved self-insurance trust that does not collect premiums or contributions from insureds will be governed by §713 hereof.

C. Failure of the commercial professional health care liability insurers, commercial insurance underwriters, and approved self-insurance trust funds to remit payment within 45 days of collecting such annual surcharge shall subject the commercial professional liability insurers, commercial insurance underwriters, and approved self-insurance trust funds to a penalty, the amount of which will be set by the board on an annual basis, not to exceed 12 percent of the annual surcharge, and all reasonable attorney fees. Upon the failure of the commercial professional health care liability insurers, commercial insurance underwriters and approved self-insurance trust funds to remit as provided in §711, the board may institute legal proceedings to collect the surcharge, together with penalties, legal interest, and all reasonable attorney fees.

D. If the instrument used to pay the surcharge is returned to the board by the payor institution and/or payment hereon is denied for any reason, the health care provider shall be notified thereof by the board. If the surcharge and any insufficient funds (NSF) charge incurred by the board is not paid in full by certified check, cashier's check, money order, or cash equivalent funds received by the board within 10 calendar days of the provider's receipt of said notice, then the provider's coverage with the fund shall be terminated as of the end of the previous enrollment period.

E. It is the purpose of §711 that insurers and approved self-insurance trust funds remit surcharges collected from their insured providers to the board timely. The timeliness of

surcharge remittances to the board by insurers and approved self-insurance trust funds shall not affect the effective date of fund coverage. However, the failure of insured health care providers to timely remit applicable surcharges to insurers and approved self-insurance trust funds for renewal may result in lapses of coverage with the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended LR 20:432 (April 1994), LR 23:69 (January 1997), LR 29:346 (March 2003), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

### **§713. Payment of Surcharges: Self-Insureds**

A. ...

B. Annual surcharges for initial PCF coverage for self-insured health care providers for enrollment and qualification with the fund shall be due and payable to the board on or before the date of initial PCF coverage. Surcharges due the board by self-insured health care providers for enrollment with the fund for an enrollment year shall be due and payable to the board on or before 30 days following the expiration of the prior enrollment period. Remittance of surcharges to the board shall be made in such form and accompanied by records in such form or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care provider remitting surcharges.

C. If the instrument used to pay the surcharge is returned to the board by the payor institution and/or payment hereon is denied for any reason, the health care provider shall be notified thereof by the board. If the surcharge and any insufficient funds (NSF) charge incurred by the board is not paid in full by certified check, cashier's check, money order, or cash equivalent funds received by the board within 10 calendar days of the provider's receipt of said notice, then the provider's coverage with the fund shall be terminated as of the end of the previous enrollment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended LR 20:432 (April 1994), LR 23:69 (January 1997), amended by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 36:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of these proposed rule amendments on the family has been considered. These proposed amendments have no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

#### **Public Comments**

All interested persons are invited to submit written comments on the amended rules. Such comments should be submitted no later than September 20, 2010 at 4:30 p.m. to Lorraine LeBlanc, Executive Director, Patient's Compensation Fund Oversight Board, 8225 Florida Boulevard, 2nd Floor (70806), Post Office Box 3718, Baton Rouge, LA 70821 and/or to David A. Woolridge, Jr., General

Counsel, Patient's Compensation Fund Oversight Board, 8440 Jefferson Highway, Suite 301, Baton Rouge, LA 70809.

Lorraine LeBlanc  
Executive Director

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

#### **RULE TITLE: Actuary; Annual Actuarial Study; Risk Rating; Rates; Surcharges**

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

It is anticipated that the proposed rule amendments will not result in savings to state or local governmental units as they only potentially impact the private sector of health care providers who desire to be qualified with the Patient's Compensation Fund (PCF or Fund). The proposed amendments: (i) clarify the Oversight Board's role in administering the Fund (ii) clarify the role of the Oversight Board's consulting actuary; (iii) clarify to be consistent with statutory law the circumstances under which a reduction in the aggregate annual surcharges could be accomplished; (iv) require the executive director to give notice of rates or rate charges via the Oversight Board's website; (v) provide, consistent with recently amended statutory law, that the Oversight Board determines surcharge rates in an open meeting following notice and public comment; (vi) clarify to be consistent with statutory law that the late payment penalty will be set annually by the Oversight Board not to exceed 12 percent; (vii) require payment of NSF charges; and (viii) clarify time delays for certain health care products to pay surcharges to continue PCF qualification. It is estimated that the costs to the PCF to implement the proposed rule amendments, including copy charges, administrative overhead expenses and legal fees, will not exceed \$1,500.

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

There is no anticipated effect on revenue collections of state or local governmental units from implementation of the proposed rule amendments as they potentially only impact the private sector of healthcare providers who are currently PCF qualified or who desire to become PCF qualified.

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

It is estimated that the proposed amendment allowing the Oversight Board to set the late payment penalty amount at no more than 12 percent should continue to result in a favorable economic benefit to those insurers and trust funds who make late payments (as the Oversight Board has consistently set the penalty amount to less than 12 percent). The proposed amendment requiring the payment of an insufficient funds (NSF) charge should have no economic impact on health care providers as this amendment simply codifies existing practice of the Oversight Board upon receipt of NSF checks. The proposed amendment to allow a 30-day grace period for self-insured health care providers to pay their renewal surcharge, as compared to no grace period currently, should result in a favorable economic benefit to those self-insured health care providers. The proposed amendment to provide that, consistent with recently amended statutory law, the Oversight Board determines surcharge rates in an open meeting following notice and public comment may result in a favorable economic benefit to health care providers enrolled in the PCF.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

The Oversight Board anticipates no effect on either competition or employment in the public sector as a result of adopting the proposed rule amendments.

Lorraine LeBlanc  
Executive Director  
1007#069

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Public Defender Board**

Trial Court Performance Standards For Attorneys  
Representing Parents in Child in Need of Care and  
Termination of Parental Rights Cases  
(LAC 22:XV.Chapter 11)

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 11, as authorized by R.S. 15:148. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 307 of the 2007 Regular Session of the Louisiana Legislature directed the Public Defender Board to adopt rules creating mandatory: 1) statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and 2) qualification standards for public defenders that ensure that the public defender services are provided by competent counsel. Said standards are to ensure that public defenders are qualified to handle specific case types which shall take into consideration the level of education and experience that is necessary to competently handle certain cases and case types, including representation of parents in Child in Need of Care cases. In compliance with the directives of Act 307, the Public Defender Board proposes to adopt these standards for trial court performance for representation of parents in Child in Need of Care cases.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part XV. Public Defender Board**

**Chapter 11. Trial Court Performance Standards for  
Attorneys Representing Parents in Child  
in Need of Care Cases**

**§1101. Purpose**

A. The standards for parent representation in child in need of care cases are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of parents in Child in Need of Care and Termination of Parental Rights cases.

B. The standards are also intended to alert defense counsel to courses of action which may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation

possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the Standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations, the lawyer's best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1103. Obligations of Defense Counsel**

A. The primary and most fundamental obligation of an attorney representing a parent in a child in need of care or a termination of parental rights case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed interests of the client. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of Court, and to properly document case files to reflect adherence to the Standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1105. General Duties of Defense Counsel**

A. Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a parent in a child in need of care or termination of parental rights proceeding. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel shall be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a parent. Counsel shall not represent both parents if their interests differ. The attorney should generally avoid representing both parents when there is even potential for conflict of interest. In situations involving allegations of domestic violence, the attorney shall not represent both parents. When appropriate, counsel may be obliged to seek an advisory opinion from the Office of Disciplinary Counsel on any potential conflicts.

C. If a conflict is discovered during the course of representation, counsel has a duty to notify the parent and the court in accordance with the Louisiana Rules of Court



and in accordance with the Louisiana Rules of Professional Conduct.

D. Counsel has the obligation to take all reasonable steps to keep the parent informed of the progress of the case.

E. Counsel has the obligation to ensure that the case file is properly documented to demonstrate adherence to the standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

F. When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the district defender for counsel's judicial district and, if applicable, the regional director. If the district defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the district defender shall inform the court or courts before whom cases are pending and the state public defender.

G. Lawyers initially appointed should continue their representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the client from the point of the initial court proceedings through disposition, post-disposition review hearings, and any other related proceedings until the case is closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1107. Training and Experience of Defense Counsel Representing a Parent in a Child in Need of Care or Termination of Parental Rights Proceeding**

A. In order to provide quality legal representation, counsel shall be familiar with the substantive juvenile law and the procedure utilized in child in need of care proceedings, including but not limited to Title VI of the Louisiana Children's Code (La. Ch.C. Articles 601 et seq.), Title X of the Louisiana Children's Code (La. Ch.C. Articles 1001 et seq.) and their applications in the State of Louisiana. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

B. Prior to agreeing to undertake representation of a parent in a child in need of care or termination of parental rights proceeding, counsel shall have sufficient experience or training to provide effective representation. It is essential for the parent's attorney to read and understand all state laws, policies and procedures regarding child abuse and neglect. In addition, the parent's attorney should be familiar with the following laws to recognize when they are relevant to a case and should be prepared to research them when they are applicable:

1. Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357;

2. Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351;

3. Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36;

4. Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979);

5. State Indian Child Welfare Act laws;

6. Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP) 42 U.S.C. § 622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. § 1996b (1998);

7. Interstate Compact on Placement of Children (ICPC);

8. Foster Care Independence Act of 1999 (FCIA), P.L. 106-169;

9. Individuals with Disabilities Education Act (IDEA), P.L. 91-230;

10. Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g;

11. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);

12. Public Health Act, 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2;

13. Louisiana Administrative Code, Title 28, Part XLIII (Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act) and Part CI (Bulletin 1508—Pupil Appraisal Handbook).

14. Immigration laws relating to child welfare and child custody;

15. State laws and rules of evidence;

16. State laws and rules of civil procedure;

17. State laws and rules of criminal procedure;

18. State laws concerning privilege and confidentiality, public benefits, education, and disabilities;

19. State laws and rules of professional responsibility or other relevant ethics standards;

20. State laws regarding domestic violence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1109. Obligations of Counsel Regarding Parent's Rights**

A. Counsel should understand and protect the parent's rights to information and decision-making while the child is in the custody of the state. The parent's attorney shall explain to the parent what decision-making authority remains with the parent and what lies with the child welfare agency while the child is in custody of the state.

B. The parent's attorney should seek updates and reports from any service provider working with the child/family and help the client obtain information about the child's safety, health, education and well-being when the client desires.

C. Where decision-making rights remain, the parent's attorney should assist the parent in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services.

D. If necessary, the parent's attorney should intervene with the Office of Community Services, provider agencies, medical providers and the school to ensure the parent has decision-making opportunities. This may include seeking

court orders when the parent has been left out of important decisions about the child's life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1111. Obligations of Counsel Prior to Filing of Petition**

A. Counsel, upon notice of appointment, should actively represent a parent prior to the filing of the petition in a case.

1. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the Office of Community Services (*e.g.*, the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing).

2. The parent's attorney should acknowledge that the parent may be justifiably emotional that the agency is involved with the client's family, and help the client develop strategies so the client does not express that emotion toward the caseworker in ways that may undermine the client's goals.

3. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate.

4. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

5. The attorney should gather and forward to the agency the names and contact information of any potential temporary placements for the children that the client would like the agency to consider.

6. The attorney should assess whether the Office of Community Services made the reasonable efforts required before removing the child from the home and the attorney should be prepared to argue a lack of reasonable efforts to the court, whenever appropriate.

B. Counsel should avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.

C. Counsel should cooperate and proactively communicate regularly with other professionals in the case, including but not limited to all agency (Office of Community Services) personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1113. Counsel's Initial Interview with Client**

A. Preparing for the Initial Interview

1. Prior to conducting the initial interview the attorney should, where possible:

- a. be familiar with the allegations against the client;
- b. obtain copies of any relevant documents which are available, including copies of any reports made by law enforcement, medical personnel or Office of Community Services personnel; and
- c. determine if any criminal charges have been or are likely to be filed against the client.

2. In addition, where the client is incarcerated, the attorney should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. where applicable, determine if a criminal defense attorney has been appointed regarding the related criminal charges, and develop as soon as is feasible with that attorney a joint strategy for addressing both the criminal charges and the child in need of care proceedings.

B. Conducting the Interview

1. The purpose of the initial interview is to acquire information from the client concerning the case and the client, and to provide the client with information concerning the case. Counsel should ensure at all interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

2. Information that should be acquired from the client, such as:

a. the facts surrounding the allegations leading to the initiation of a child in need of care proceeding, to the extent the client knows and is willing to discuss these facts;

b. where applicable, the client's version of the removal of the child(ren); whether client was interrogated and if so, whether a statement was given; client's physical and mental status at the time the statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on client's body or bodily fluids;

c. the name(s) and marital status of all parents of the subject child(ren) and the name of counsel for the other parents (if a conflict has been determined and counsel has been appointed or retained);

d. the names and locating information of any witnesses to the alleged abuse and/or neglect; regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the state and/or Office of Community Services (when appropriate, counsel should take steps to insure this evidence is preserved);

e. the client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status (if applicable), employment record and history, and social security number;

f. the client's physical and mental health, educational, vocational and armed services history;

g. the client's immediate medical needs, including the need for detoxification programs and/or substance abuse treatment;

h. the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; the client's past involvement, if any, with a child in need of care case or the Department of Social Services or, more specifically, the Office of Community Services; counsel should also determine whether the client has any pending charges or outstanding warrants from other

jurisdictions or agencies, whether he or she is on probation (including the nature of the probation) or parole, and the client's past or present performance under supervision;

i. the names of individuals or other sources that counsel can contact to verify the information provided by the client (counsel should obtain the permission of the client before contacting these individuals); and

j. where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the alleged abuse and/or neglect, including releases from the client for any records for treatment or testing for mental health or mental retardation.

3. Information to be provided to the client, includes, but is not limited to:

a. taking care to distinguish him or herself from others in the system so the client can see that the attorney serves the client's interests, an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;

b. a general overview of the procedural progression of the case, the legal issues related to the case, including specific allegations against the client, the case plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with case plans, as well as the general expectations of the court and the agency, and potential consequences of the client failing to meet those expectations;

c. an explanation of the persons involved in a Child in Need of Care case and in any subsequent Termination of Parental Rights proceeding and the role and responsibility each person has;

d. contact information in writing and a message system that allows regular attorney-client contact. The attorney should explain that even when the attorney is unavailable, the parent should leave a message. The attorney shall respond to client messages in a reasonable time period; and

e. the names of any other persons who may be contacting the client on behalf of counsel.

4. For clients who are incarcerated:

a. communicate with the client on a regular and ongoing basis, including conferring with the client within 72 hours of being appointed and prior to every court appearance;

b. where appropriate, explain how the criminal proceedings will relate to the child in need of care and any subsequent termination of parental rights proceedings;

c. warn the client of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials; and

d. assist client in obtaining services such as substance abuse treatment, parenting skills, or job training while incarcerated.

5. The parent's attorney and client should discuss timelines that reflect projected deadlines and important dates and a calendar system to remember the dates. The timeline should specify what actions the attorney and parent will need to take and dates by which they will be completed. The

timeline should reflect court deadlines and Office of Community Services deadlines.

6. Counsel should make available to the client copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order. Counsel should continue throughout the proceedings to provide client all relevant documents. If the client has difficulty reading, the attorney should read the documents to the client. In all cases, the attorney should be available to discuss and explain the documents to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§1115. Counsel's Duties Regarding Client Communication**

A. Counsel shall act in accordance with the duty of loyalty owed to the client. Attorneys representing parents should show respect and professionalism towards their clients. Parents' attorneys should support their clients and be sensitive to the client's individual needs. Attorneys should remember that they may be the client's only advocate in the system and should act accordingly.

B. Counsel shall adhere to all laws and ethical obligations concerning confidentiality. Attorneys representing parents shall understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client.

C. Counsel shall meet and communicate regularly with the client well before court proceedings.

D. Counsel should advocate for the client's goals and empower the client to direct the representation and make informed decisions.

E. Counsel should identify any potential barriers to the client's cooperation in the proceedings.

1. The parent's attorney should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent needs to understand these issues to make appropriate decisions for the child's care.

2. The parent's attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, housing and financial issues. The attorney should work with the client, caseworker and service provider to resolve the barriers.

3. The attorney should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

F. Counsel should act with regard to the cultural background and socioeconomic position of the parent throughout all aspects of representation. The parent's attorney should learn about and understand the client's background, and consider how cultural and socioeconomic differences impact interaction with clients.

G. Counsel should be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case in accordance with Louisiana Rule of Professional Conduct 1.14 (Client with Diminished Capacity). The attorney should be familiar with any mental

health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). The attorney should get consent from the client to review mental health records and to speak with former and current mental health providers. The attorney should explain to the client that the information is necessary to understand the client's capacity to work with the attorney. If the client's situation seems severe, the attorney should also explain that the attorney may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney.

H. When appointed as a curator, counsel should undertake diligent efforts to locate a missing parent, including but not limited to investigation and attempts to contact persons who may have information regarding the location of the parent. If the missing parent is found, notify him or her of the pendency and nature of the proceedings. If the missing parent is not found, the defender should stay involved throughout the case, object when necessary to preserve the missing parent's rights, and make periodic attempts to find the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1117. Counsel's Duty to Investigate**

A. Counsel has a duty to conduct a prompt, reasonable and independent investigation at every stage of the proceeding of each case. Counsel should investigate whether the allegations of abuse and/or neglect and disposition are factually and legally correct and the client is aware of potential defenses to the allegations. The parent's attorney cannot rely solely on what the agency caseworker reports about the parent. The attorney could consider contacting service providers who work with the client, relatives who can discuss the parent's care of the child, and the child's teachers or other people who can clarify information relevant to the case.

B. Counsel should interview the client well before each hearing, in time to use client information for the case investigation. The parent's attorney should meet with the parent regularly throughout the case. The meetings should occur well before the hearing, not just at the courthouse before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case and strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case.

C. Counsel should consider the necessity to interview the potential witnesses, including any adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses adverse to the accused should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview, either by having an investigator present or, if that is not possible, by sending the investigator to conduct the interview.

D. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not

doing so. Counsel should obtain National Crime Information Center or other states' criminal history records for the client and for the prosecution witnesses.

E. Where appropriate, counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.

F. Counsel should secure the assistance of experts where it is necessary or appropriate to:

1. the preparation of the defense;
2. adequate understanding of the agency's case; or
3. rebut the agency's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1119. Informal Discovery**

A. The parent's attorney should review the child welfare agency case file as early during the course of representation as possible and periodically thereafter.

B. The parent's attorney should obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1121. Formal Discovery**

A. The parent's attorney should use formal discovery methods to obtain information and inspect evidence as permitted by La. Ch.C. Art. 652.

B. Counsel should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;
2. potential mitigating information;
3. the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
4. all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;
5. the prior criminal record of the accused and any evidence of other misconduct that the government may intend to use against the accused;
6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
8. all investigative reports by all law enforcement and other agencies involved in the case; and
9. all records of evidence collected and retained by law enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1123. Court Preparation**

A. During investigation and trial preparation, counsel should develop and continually reassess a theory of the case and strategy to follow at hearings and negotiations.

B. Counsel for parents should engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.

1. The parent's attorney should know about the social, mental health, substance abuse treatment and other services that are available to parents and families in the jurisdiction in which the attorney practices so the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney should determine whether the client has access to the necessary services to overcome the issues that led to the case.

2. The attorney should actively engage in case planning, including attending major case meetings and family team conferences, to ensure the client asks for and receives the needed services. The attorney should also ensure the client does not agree to undesired services that are beyond the scope of the case.

3. Whenever possible, the parent's attorney should engage or involve a social worker as part of the parent's "team" to help determine an appropriate case plan, evaluate social services suggested for the client, and act as a liaison and advocate for the client with the service providers.

C. Counsel for parents should research applicable legal issues and advance legal arguments when appropriate.

D. Counsel for parents shall timely file all appropriate pleadings, motions, and briefs.

1. Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the parent is entitled to relief which the court has discretion to grant.

2. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

3. Among the issues that counsel should consider addressing in a pretrial motion are:

- a. the constitutionality of the implicated statute or statutes;
- b. the potential defects in the charging process;
- c. the sufficiency of the charging documents;
- d. the discovery obligations of the prosecution/agency and the reciprocal discovery obligations of the defense; and
- e. access to resources which, or experts, who may be denied to an accused because of his or her indigence.

E. Counsel for parents should aggressively advocate for regular visitation in a family-friendly setting. Factors to consider in visiting plans include:

1. frequency;
2. length;
3. location;
4. supervision;
5. types of activities; and
6. visit coaching—having someone at the visit who could model effective parenting skills.

F. With the client's permission, and when appropriate, counsel for parents should engage in settlement negotiations and mediation to resolve the case. Counsel should adhere to all laws and ethical obligations concerning confidentiality and participate in such proceedings in good faith.

1. Counsel should keep the client fully informed of any continued discussion concerning stipulating and related

negotiations and promptly convey to the accused any offers made by the prosecution/agency for a negotiated settlement.

2. Counsel shall not accept any stipulation agreement without the client's express authorization. Prior to entering any stipulation, counsel should ensure that client understands the potential consequences of certain stipulations, particularly the potential for a subsequent Termination of Parental Rights.

3. The existence of ongoing tentative stipulation negotiations with the prosecution/agency should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing stipulation negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

4. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of:

a. the conditions proposed by the Office of Community Services;

b. the spectrum of possible outcomes;

c. other consequences of adjudication, including but not limited to the impact on any potential criminal investigation or subsequent termination of parental rights proceeding;

d. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

i. not to proceed to adjudication;

ii. to decline from asserting or litigating any particular pretrial motions; and

iii. an agreement to fulfill specified, written conditions; and

e. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. to enter into an informal adjustment agreement;

ii. reunification with particular conditions;

iii. to dismiss or reduce one or more charged criminal offenses either immediately, or upon completion of a deferred prosecution agreement; and

iv. that the respondent will not be subject to further investigation or prosecution for uncharged alleged criminal conduct.

5. In conducting stipulation negotiations, counsel should be familiar with:

a. the advantages and disadvantages of stipulation according to the circumstances of the case; and

b. the various types of stipulations that may be agreed to, including but not limited to a stipulation without admitting the allegations;

6. In conducting negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and Office of Community Services personnel which may affect the content and likely results of negotiated agreements.

G. Counsel for parents should thoroughly prepare the client to testify at the hearing;

H. Counsel for parents should identify, locate and prepare all witnesses; and

I. Counsel for parents should identify, secure, prepare and qualify expert witness when needed. When permissible, counsel should interview opposing counsel's experts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1125. Entering the Negotiated Stipulation before the Court**

A. Prior to the entry of a stipulation, counsel should:

1. make certain that the client understands the rights he or she will waive by entering the stipulation and that the client's decision to waive those rights is knowing, voluntary and intelligent;

2. make certain that the client receives a full explanation of the conditions and limits of the stipulation and the potential outcomes and collateral consequences the client will be exposed to by entering a stipulation; and

3. explain to the client the nature of the stipulation and prepare the client for the role he or she will play in the proceeding, including answering questions of the judge and, where appropriate, providing a statement concerning the allegations.

B. When entering the stipulation, counsel should make sure that the full content and conditions of the stipulation agreement are placed on the record before the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1127. Counsel's Duties at Continued Custody Hearing**

A. At the continued custody hearing, counsel for a parent should take steps to see that the hearing is conducted in a timely fashion pursuant to La. Ch. C. Art. 624, unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the alleged abuse and/or neglect;

2. the law of establishing grounds of abuse and neglect (La. Ch. C. Art. 606);

3. the requirement that the department made reasonable efforts to prevent or eliminate the need for the child(ren)'s removal before taking custody of the child(ren); and

4. the subpoena process for obtaining compulsory attendance of witnesses at the Continued Custody Hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

C. Counsel for a parent should be prepared, in keeping with an overall case strategy, to present reasonable terms of return/reunification of children, with potential conditions, at the continued custody phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1129. Counsel's Duty of Preparation for Adjudication**

A. Where appropriate, counsel should have the following materials available at the time of adjudication:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. cross-examination plans for all possible prosecution witnesses;
4. direct examination plans for all prospective defense witnesses;
5. copies of defense subpoenas;

6. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements;

7. prior statements of all defense witnesses;

8. reports from defense experts;

9. a list of all defense exhibits, and the witnesses through whom they will be introduced;

10. originals and copies of all documentary exhibits; and

11. copies of all relevant statutes and cases.

B. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the adjudication process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise at adjudication.

C. Counsel should request the opportunity to make opening and closing arguments. When permitted by the judge, counsel should make opening and closing arguments to best present the theory of the case.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

E. Throughout the adjudication process counsel should endeavor to establish a proper record for appellate review. Counsel shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, if necessary, counsel should consider filing pre-trial motions to insure that the client has appropriate clothing.

G. Counsel should plan with the client the most convenient system for conferring throughout the adjudication hearing. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Counsel should prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client.

I. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1131. Right to Closed Proceedings (or a Cleared Courtroom)**

A. In accordance with La. Ch.C. Art. 407, the parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate.

B. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1133. Preparation for Challenging the Prosecution's/Agency's Case**

A. Counsel should attempt to anticipate weaknesses in the prosecution's case and consider researching and preparing corresponding motions to dismiss.

B. Counsel should consider the advantages and disadvantages of entering into factual stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

1. consider the need to integrate cross-examination, the theory of the defense and closing argument;
2. consider whether cross-examination of each of the individual witnesses is likely to generate helpful information;
3. anticipate those witnesses the prosecution might call in its case-in-chief or in rebuttal;
4. consider a cross-examination plan for each of the anticipated witnesses;
5. be alert to inconsistencies in a witnesses' testimony;
6. be alert to possible variations in witnesses' testimony;
7. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
8. have prepared a transcript of all audio or video tape recorded statements made by the witnesses;
9. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;
10. be alert to issues relating to witnesses' credibility, including bias and motive for testifying; and
11. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses.

E. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case, counsel should move for a finding that the child is not in need of care. Counsel should request, when necessary, that the court immediately rule on the motion, in order that

counsel may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1135. Presenting the Respondent's Case**

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its burden of proving its case by a preponderance of the evidence.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should explain to the client the constitutional right to not testify and weigh the value of doing so with the client.

C. In preparing for presentation of a defense case, counsel should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;
2. determine the implications that the order of witnesses may have on the defense case;
3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
4. consider the possible use of character witnesses;
5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
6. review all documentary evidence that must be presented; and
7. review all tangible evidence that must be presented.

D. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

E. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

F. Counsel should conduct redirect examination as appropriate.

G. At the close of the defense case, counsel should renew the motion for a finding that the child is not in need of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1137. Obligations of Counsel at Disposition Hearing**

A. Counsel for a parent, regarding the disposition process, should:

1. where a Respondent chooses not to proceed to adjudication, ensure that a stipulation agreement is negotiated with consideration of the dispositional implications;
2. ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the disposition;

3. ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court; and

4. develop a plan which seeks to achieve the least restrictive and burdensome disposition that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§1139. Preparation for Disposition**

A. In preparing for disposition, counsel should consider the need to:

1. inform the client of the dispositional alternatives, and the likely and possible consequences of those alternatives;

2. maintain regular contact with the client prior to the disposition hearing, and inform the client of the steps being taken in preparation for same;

3. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, financial status, family obligations, and sources through which the information provided can be corroborated;

4. inform the client of his or her right to testify at the disposition hearing and assist the client in preparing the testimony, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal;

5. inform the client of the effects that admissions and other statements may have upon an appeal, termination of parental rights proceedings, or other judicial proceedings, such as criminal proceedings; and

6. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the disposition hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§1141. The Prosecution's Position at Disposition**

A. Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution/agency will advocate that a particular disposition be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§1143. The Disposition Process**

A. Counsel should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the client's interest.

B. In the event there will be disputed facts before the court at the disposition hearing, counsel should be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

C. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

D. Where appropriate, counsel should prepare the client to personally address the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

### **§1145. Termination of Parental Rights Proceedings**

A. Counsel should be aware of and advise the client of the gravity and potential permanent effects of a termination of parental rights petition. A termination of parental rights ruling has a serious impact as the parent can lose all rights to visitation, custody, and contact with the child. Counsel should treat any termination hearings with the respect, dedication, and commitment such a serious matter deserves.

B. Counsel should meet or exceed the standards set forth below:

1. Preparation for termination of parental rights hearing:

a. Where appropriate, counsel should have the following materials available at the time of the termination hearing:

i. copies of all relevant documents filed in the case;

ii. relevant documents prepared by investigators;

iii. cross-examination plans for all possible prosecution witnesses;

iv. direct examination plans for all prospective defense witnesses;

v. copies of defense subpoenas;

vi. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video-taped witness statements;

vii. prior statements of all defense witnesses;

viii. reports from defense experts;

ix. a list of all defense exhibits, and the witnesses through whom they will be introduced;

x. originals and copies of all documentary exhibits; and

xi. copies of all relevant statutes and cases.

b. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the termination process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise at termination hearings.

c. Counsel should request the opportunity to make opening and closing arguments. When permitted by the judge, counsel should make opening and closing arguments to best present the theory of the case.

d. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

e. Throughout the termination hearing process, counsel should endeavor to establish a proper record for appellate review. Counsel shall be familiar with the



substantive and procedural law regarding the preservation of legal error for appellate review, and should insure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

f. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, if necessary, counsel should consider filing pre-trial motions to insure that the client has appropriate clothing.

g. Counsel should plan with the client the most convenient system for conferring throughout the termination hearing. Where necessary, counsel should seek a court order to have the client available for conferences.

h. Counsel should prepare proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client.

i. Counsel shall take necessary steps to insure full official recordation of all aspects of the court proceeding.

## 2. Right to Closed Proceedings (or a Cleared Courtroom)

a. In accordance with La. Ch.C. Art. 407, the parent's attorney should be aware of who is in the courtroom during a hearing and should request the courtroom be cleared of individuals not related to the case when appropriate.

b. The attorney should be attuned to the client's comfort level with people outside of the case hearing about the client's family.

## 3. Preparation for Challenging the Prosecution's/Agency's Case

a. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment denying termination of parental rights.

b. Counsel should consider the advantages and disadvantages of entering into factual stipulations concerning the prosecution's case.

c. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

d. In preparing for cross-examination, counsel should:

i. consider the need to integrate cross-examination, the theory of the defense and closing argument;

ii. consider whether cross-examination of each of the individual witnesses is likely to generate helpful information;

iii. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

iv. consider a cross-examination plan for each of the anticipated witnesses;

v. be alert to inconsistencies in witness testimony;

vi. be alert to possible variations in witness testimony;

vii. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

viii. have prepared a transcript of all audio or video tape recorded statements made by the witnesses;

ix. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;

x. be alert to issues relating to witness credibility, including bias and motive for testifying; and

xi. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

e. Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

f. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

g. Where appropriate, at the close of the prosecution's case, counsel should move for a judgment upholding the parental rights of the client. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

## 4. Presenting the Respondent's Case

a. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its burden of proving its case by a preponderance of the evidence.

b. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should explain to the client the constitutional right to not testify and weigh the value of doing so with the client.

c. In preparing for presentation of a defense case, counsel should, where appropriate:

i. develop a plan for direct examination of each potential defense witness;

ii. determine the implications that the order of witnesses may have on the defense case;

iii. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

iv. consider the possible use of character witnesses;

v. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;

vi. review all documentary evidence that must be presented; and

vii. review all tangible evidence that must be presented.

d. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

e. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

f. Counsel should conduct redirect examination as appropriate.

g. At the close of the defense case, counsel should renew the motion for a judgment upholding the parental rights of the client.

C. Whenever appropriate, counsel should consider an appeal of an unfavorable verdict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1147. Review Court Orders to Ensure Accuracy and Clarity and Review with Client**

A. After any hearing, the parent's attorney should review the written order to ensure it reflects the court's verbal order.

B. If the order is incorrect, the attorney should take whatever steps are necessary to correct it.

C. Once the order is final, the parent's attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about any options to appeal or request rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1149. Motion for Rehearing**

A. Counsel should be familiar with the procedures available to request a rehearing including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When the court has adjudicated the subject child(ren) a child in need of care or has ordered a termination of parental rights, counsel should consider whether it is appropriate to file a motion for rehearing with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

1. the likelihood of success of the motion, given the nature of the error or errors that can be raised; and

2. the effect that such a motion might have upon the respondent's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the respondent's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1151. Take Reasonable Steps to Ensure the Client Complies with Court Orders**

A. The parent's attorney should answer the parent's questions about obligations under the order and periodically check with the client to determine the client's progress in implementing the order.

B. If the client is attempting to comply with the order but other parties, such as the child welfare agency, are not meeting their responsibilities, the parent's attorney should approach the other party and seek assistance on behalf of the client.

C. If necessary, the attorney should bring the case back to court to review the order and the other party's noncompliance or take other steps to ensure that appropriate social services are available to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1153. Consider and Discuss the Possibility of Appeal with the Client**

A. The parent's attorney should consider and discuss with the client the possibility of appeal when a court's ruling is contrary to the client's position or interests.

B. The attorney should counsel the client on the likelihood of success on appeal and potential consequences of an appeal.

C. The attorney shall also comply with all ethical rules and Rules of Courts of Appeal concerning the attorney's determination that there is a reasonable basis for the appeal.

D. Depending on rules in the attorney's jurisdiction, the attorney should also consider filing an extraordinary writ or motions for other post-hearing relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

#### **§1155. Appeals**

A. If the client decides to appeal, counsel should timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the jurisdiction's Rules of Appellate Procedure.

B. The appellate brief should be clear, concise, and comprehensive and also timely filed. The brief should reflect all relevant case law and present the best legal arguments available in state and federal law for the client's position. The brief should include novel legal arguments if there is a chance of developing favorable law in support of the parent's position.

C. If oral arguments are scheduled, the attorney should be prepared, organized, and direct. Appellate counsel should inform the client of the date, time and place scheduled for oral argument of the appeal upon receiving notice from the appellate court. Oral argument of the appeal on behalf of the client should not be waived, absent the express approval of the client, unless doing so would benefit the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1157. Expedited Appeals**

A. The attorney should request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.

B. The attorney should provide information about why the case should be expedited, such as any special characteristics about the child and why delay would harm the relationship between the parent and child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**§1159. Communication with Client Pending and After Appeal**

A. The parent's attorney should communicate the result of the appeal and its implications.

B. The parent's attorney should provide the client with a copy of the appellate decision.

C. If, as a result of the appeal, the attorney needs to file any motions with the trial court, the attorney should do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 36:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by helping to ensure that affected families receive appropriate services and are reunited, when possible, thereby helping the family unit during a time of crisis.

**Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

**Public Comments**

Interested persons who wish to submit data, views, comments, or arguments may do so by writing to Jean M. Faria, State Public Defender, 500 Laurel Street, Suite 300, Baton Rouge, LA 70801. Such writings will be accepted through 2 p.m., Monday, September 27, 2010.

Jean M. Faria  
State Public Defender

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

**RULE TITLE: Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases**

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

There are no anticipated implementation costs or savings to the state or local government units, as the objective of the proposed rule is to increase the quality of representation without increasing costs or the Louisiana Public Defender Board's table of organization. Training will be provided at no cost to public defender attorneys; however, it is conceivable that District Public Defenders may incur some costs associated with travel (i.e., mileage, meals and lodging) if public defender attorneys working for them are required to travel to attend training.

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

There will be no impact on state or local revenue collections.

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

This rule proposes to adopt provisions establishing mandatory guidelines and performance standards for the defense of parents in Child in Need of Care and Termination of Parental Rights cases. It is anticipated that implementation of this proposed rule may have minimal cost—in the form of travel costs only—for public defender attorneys who must travel to attend mandatory training if the District Public Defender who employs/contracts such public defender attorneys chooses to not pay such travel costs.

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

This proposed amended rule should not affect competition or employment.

Jean M. Faria  
State Public Defender  
1007#093

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Sheriffs' Pension and Relief Fund**

Eligible Rollover Distribution (LAC 58:XV.103)

Please take notice that the Louisiana Sheriffs' Pension and Relief Fund (the "fund"), in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, intends to adopt a Rule requiring the fund to provide the recipient of an eligible rollover distribution from the fund with notice of that distribution within a reasonable period of time before the distribution is made. The proposed Rule details specific information which must be contained in the notice, and references the appropriate sections of the Internal Revenue Code.

**Title 58  
RETIREMENT**

**Part XV. Sheriffs' Pension and Relief Fund**

**Chapter 1. General Provisions**

**§103. Eligible Rollover Distribution**

A. Within a reasonable period of time before making an eligible rollover distribution, the executive director or the assistant executive director of the fund shall provide a written explanation to the recipient of such a distribution explaining the following:

1. the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with §401(a)(31)(B) of the Internal Revenue Code;

2. the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan;

3. the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient receives the distribution;

4. the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

B. For the purposes of this rule, a "reasonable period of time" shall have the meaning assigned to it under §401(a)(31) of the Internal Revenue Code and the regulations thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2177.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Sheriffs' Pension and Relief Fund, LR 36:

**Family Impact Statement**

The Rule is not expected to have a negative impact on family formation, stability and autonomy.

**Public Comments**

Inquiries and comments concerning the proposed Rule should be directed to Keith Duplechain, Deputy Executive Director of the fund by September 10, 2010. The office hours of the fund for purposes of receiving comments and responding to inquiries are 9:00 a.m. until 3:00 p.m., Monday through Friday, excepting state holidays. The fund's office is located at 1225 Nicholson Drive, Baton Rouge, LA 70802. Inquiries and comments may also be submitted by fax to (225) 219-0521. Telephone inquiries and comments are not accepted.

Osey McGee, Jr.  
Executive Director

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

**RULE TITLE: Eligible Rollover Distribution**

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

The proposed rule change will have no impact on state or local government expenditures. The proposed rule simply formalizes the timeline and specifies the information that must

be contained in notices regarding eligible rollover distributions, in accordance with newly revised IRS rulings.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

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

There is no additional cost and/or economic benefit to directly affected persons or nongovernmental groups associated with this rule change.

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

There is no anticipated effect on competition or employment associated with this proposed rule change.

Osey McGee, Jr.  
Executive Director  
1007#006

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Licensure Exemptions; Emergency Transfer of Patients  
(LAC 46:XLV.423)

Notice is hereby given that the Louisiana State Board of Medical Examiners (board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., intends to amend its administrative rules governing licensure and certification of physicians, LAC 46:XLV, Subpart 2 (Licensure and Certification), Chapter 3 (Physicians), Subchapter I, (License Issuance, Termination, Renewal and Reinstatement), by adopting a new Section 423 (Exemptions to Licensure; Emergency Transfer of Patients). The proposed Rule would exempt from licensure a physician or allied health care practitioner within the board's jurisdiction to regulate, who is licensed to practice in another state, while providing emergency care to an acutely ill patient during transfer or transportation to or from a hospital in this state.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions**

**Subpart 2. Licensure and Certification**

**Chapter 3. Physicians**

**Subchapter I. License Issuance, Termination, Renewal,  
Reinstatement and Exemptions**

**§423. Exemptions to Licensure; Emergency Transfer  
of Patients**

A. In addition to the exemptions to licensure provided by R.S. 37:1291, a license to practice medicine shall not be required for a physician-member of a transport team providing emergency or other medical care to an acutely ill patient during transfer or transportation to or from a hospital in this state provided such physician is duly licensed to practice medicine by the medical licensing authority of another state.

B. The exemption provided by Subsection A of this Section, shall also apply to any license, certificate or

registration of any allied health care professional, which the board is authorized to issue, who is a member of a transport team providing emergency or other medical care to an acutely ill patient during transfer or transportation to or from a hospital in this state provided such allied health care practitioner is duly licensed to practice his profession by the medical licensing authority of another state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, and 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR. 36:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is anticipated that the proposed Rule amendment will have no impact on family, formation, stability or autonomy, as described in R.S. 49:972.

#### **Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, LA 70190-0250 (1515 Poydras Street, Suite 2700, New Orleans, LA 70112), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4:00 p.m., September 20, 2010. A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Robert L. Marier, M.D.  
Executive Director

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

#### **RULE TITLE: Licensure Exemptions; Emergency Transfer of Patients**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Other than notice/rule publication costs estimated at a combined total of \$206, which will be absorbed within the Board's budget during the current fiscal year, it is not anticipated that the proposed rule will result in any additional costs or savings to the Board or any other state or local governmental unit.

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

There are no estimated effects on the Board's revenue collections or that of any other state or local governmental unit anticipated from the proposed rule.

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

It is not anticipated that the proposed rule will have any material effect on costs, paperwork or workload of physicians or applicants. Nor is it anticipated that the proposed rule will result in any adverse costs and/or economic impact on applicants, licensees or non-governmental groups. This rule exempts from licensure a physician or allied health care provider who is a member of a transport team providing emergency or other medical care to an acutely ill patient,

provided such physician or allied health provider is duly licensed to practice medicine in another state.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is not anticipated that the proposed rule will have any material impact on competition or employment in either the public or private sector.

Robert Marier, M.D.  
Executive Director  
1008#082

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Early and Periodic Screening, Diagnosis and Treatment  
Personal Care Services Reimbursement Methodology  
(LAC 50:XV.7321)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for personal care services covered in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to implement an hourly wage enhancement payment to providers for personal care workers (*Louisiana Register*, Volume 33, Number 11).

The department promulgated a Notice of Intent in the April 20, 2010 edition of the *Louisiana Register* which proposed to amend the provisions governing EPSDT personal care services to further clarify these provisions, to revise the reimbursement methodology to be consistent with current payment methodologies, and to expand provider participation requirements. As a result of comments received, the department has determined that it is necessary to revise and republish the Notice of Intent. Therefore, the department now proposes to amend the provisions governing EPSDT personal care services to revise the reimbursement methodology to be consistent with current payment methodologies.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

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

#### **Chapter 73. Personal Care Services**

#### **§7321. Reimbursement**

A. Reimbursement for EPSDT personal care services shall be the lesser of billed charges or the maximum unit rate set by the department. The maximum rate is a flat rate for each approved unit of service provided to the recipient. This rate shall be adjusted as necessary by the department.

1. One quarter hour (15 minutes) is the standard unit of service, exclusive of travel time to arrive at the recipient's home.

2. The entire 15 minutes shall have been spent providing personal care services in order to be reimbursed for a unit.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:2202 (October 2007), repromulgated LR 33:2425 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

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

#### **RULE TITLE: Early and Periodic Screening, Diagnosis and Treatment—Personal Care Services Reimbursement Methodology**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 10-11. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 10-11. It is anticipated that \$164 will be collected in FY 10-11 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the provisions governing personal care services covered in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to revise the reimbursement methodology to be consistent with current payment methodologies (approximately 3,911,000 service units). It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 10-11, FY 11-12 and FY 12-13.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1008#114

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Reimbursement Rate Reduction  
(LAC 50:V.953, 955, 959 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.953, §955, §959, and adopt §967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act, and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In anticipation of a budgetary shortfall in state fiscal year (SFY) 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing inpatient hospital services to reduce the reimbursement rates paid to non-rural non-state hospitals (*Louisiana Register*, Volume 35, Number 5). As a result of the legislature allocating additional funds to lessen the impact of SFY 2010 budget reductions, the department repealed the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and amended the provisions governing inpatient hospital services to adjust the rate reductions (*Louisiana Register*, Volume 35, Number 8). The final Rule was published July 20, 2010 (*Louisiana Register*, Volume 36, Number 7). In January 2010, the department established a Medicaid upper

payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1).

As a result of a continuing budgetary shortfall in SFY 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 1). The department subsequently promulgated an Emergency Rule which repealed the January 22, 2010 Emergency Rule in its entirety and amended the provisions governing the reimbursement methodology for inpatient hospital services to adjust the rate reduction (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 3, 2010 Emergency Rule.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services and children's specialty hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospitals**

#### **Chapter 9. Non-Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

#### **§953. Acute Care Hospitals**

A. - M. ...

N. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

O. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1300 shall be exempt from this reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:

#### **§955. Long Term Hospitals**

A. - E. ...

F. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:

#### **§959. Inpatient Psychiatric Hospital Services**

A. - G. ...

H. Effective for dates of service on or after February 3, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:

#### **§967. Children's Specialty Hospitals**

A. Routine Pediatric Inpatient Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

B. Inpatient Psychiatric Services. These services shall be paid at the lesser of cost or the target rate per discharge ceiling. The base period target rate per discharge ceiling amount shall be calculated using the allowable inpatient cost per discharge per the cost reporting period ended in state fiscal year (SFY) 2009. The target rate shall be inflated using the update factors published by CMS beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid discharges for the period multiplied times the target rate per discharge for the period.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants. Payment shall be the lesser of costs or the per diem limitation for each specialty service or type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each specialty or type of transplant per the cost reporting period ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid Services (CMS) beginning with cost reporting periods starting on or after January 1, 2010.

1. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each specialty or type of transplant multiplied times the per diem limitation for the period.

D. Children's specialty hospitals shall not be eligible for outlier payments after September 1, 2009.

1. Outlier payments made in SFY 2010 in excess of \$12,798,000 shall be considered as an interim payment in the determination of the cost settlement.

E. These provisions shall not preclude children's specialty hospitals from participation in the Medicaid Program under the high Medicaid or graduate medical education supplemental payment provisions.

1. All Medicaid supplemental payments shall be included as an interim Medicaid inpatient payment in the determination of cost settlement amounts on the filed cost report.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.A.-C above shall be reduced by 5 percent. Final payment shall be the lesser of 95 percent of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A.-C for the period, multiplied by 95 percent of the target rate per discharge or per diem limitation as specified per §967.A.-C for the period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability or autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of \$11,054,109 for FY 10-11, \$14,020,669 for FY 11-12 and \$14,306,540 for FY 12-13. It is anticipated that \$820 (\$410 SGF and \$410 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$32,742,688 for FY 10-11, \$31,090,877 for FY 11-12 and \$32,158,352 for FY 12-13. It is anticipated that \$410 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility), state general fund match could be reduced in the current fiscal year.



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

This proposed rule is being promulgated to continue the provisions of the February 3, 2010 emergency rule which amended the provisions governing the reimbursement methodology for inpatient hospitals to adjust the rate reduction for inpatient hospital services rendered by non-rural, non-state hospitals (approximately 137 hospitals). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Hospital Program by approximately \$43,797,617 for FY 10-11, \$45,111,546 for FY 11-12 and \$46,464,892 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made for inpatient hospital services. The reduction in payments may adversely impact the financial standing of hospitals, and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1008#115

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Laboratory and Radiology Services  
Reimbursement Rate Reduction  
(LAC 50:XIX.4329 and 4334-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XIX.4329 and §§4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). This proposed

Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XIX. Other Services**

**Subpart 3. Laboratory and Radiology**

**Chapter 43. Billing and Reimbursement**

**Subchapter B. Reimbursement**

**§4329. Laboratory Services (Physicians and Independent Laboratories)**

A. - G. ...

H. Effective for dates of service on or after January 22, 2010, the reimbursement rates for laboratory services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:

**§4334. Radiology Services**

A. - F. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:

**§4335. Portable Radiology Services**

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for portable radiology services shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:

**§4337. Radiation Therapy Centers**

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.42 percent of the fee amounts on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:

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

Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

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

#### **RULE TITLE: Laboratory and Radiology Services Reimbursement Rate Reduction**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic savings to the state of approximately \$1,366,675 for FY 10-11, \$1,733,642 for FY 11-12, and \$1,768,990 for FY 12-13. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$4,048,446 for FY 10-11, \$3,844,355 for FY 11-12, and \$3,976,347 for FY 12-13. It is anticipated that \$205 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after

December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the January 22, 2010 emergency rule which amended the provisions governing the reimbursement methodology for laboratory and radiology services to reduce the reimbursement rates (approximately 5,215 procedure codes). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$5,415,531 for FY 10-11, \$5,577,997 for FY 11-12 and \$5,745,337 for FY 12-13.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to laboratory and radiology services providers. The reduction in payments may adversely impact the financial standing of laboratory and radiology services providers and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1008#116

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Medical Transportation Program  
Emergency Ambulance Services  
Reimbursement Rate Reduction  
(LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.325 and §353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the reimbursement methodology for emergency medical transportation services to reduce the reimbursement for disposable and routine supplies (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended

the provisions governing the reimbursement methodology for emergency medical transportation services to further reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XXVII. Medical Transportation Program**

### **Chapter 3. Emergency Medical Transportation**

#### **Subchapter B. Ground Transportation**

#### **§325. Reimbursement**

A. - F.2. ...

G. Effective for dates of service on or after January 22, 2010, the reimbursement rates for emergency ambulance transportation services shall be reduced by 5 percent of the rate on file as of January 21, 2010.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), amended LR 36:

#### **Subchapter C. Aircraft Transportation**

#### **§353. Reimbursement**

A. - D. ...

E. Effective for dates of service on or after January 22, 2010, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 5 percent of the rate on file as of January 21, 2010.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Beck  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Transportation Program—Emergency Ambulance Services—Reimbursement Rate Reduction**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic savings to the state of approximately \$512,078 for FY 10-11, \$649,686 for FY 11-12, and \$662,933 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$1,517,077 for FY 10-11, \$1,440,681 for FY 11-12, and \$1,490,145 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the January 22, 2010 emergency rule which amended the provisions governing the reimbursement methodology for emergency medical transportation services to reduce the reimbursement rates (approximately 72,000 service units). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$2,029,483 for FY 10-11, \$2,090,367 for FY 11-12 and \$2,153,078 for FY 12-13.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to emergency ambulance services providers. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

Anthony Keck  
Secretary  
1008#117

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program  
Non-Emergency Ambulance Service  
Reimbursement Rate Reduction  
(LAC 50:XXVII.571)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.571 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for emergency and non-emergency ambulance transportation services to increase the ground mileage and the ancillary services and repromulgated the existing provisions in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 34, Number 5).

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency ambulance transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part. XXVII. Medical Transportation Program

#### Chapter 5. Non-Emergency Medical Transportation

#### Subchapter D. Reimbursement

#### §571. Non-Emergency Ambulance Transportation

A. - C. ...

D. Effective for dates of service on or after January 22, 2010, the ground mileage and ancillary services reimbursement rates for non-emergency ambulance transportation services shall be reduced by 5 percent of the rate in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

## Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Beck  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Medical Transportation Program Non-Emergency Ambulance Service Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic savings to the state of approximately \$185,566 for FY 10-11, \$235,514 for FY 11-12, and \$240,316 for FY 12-13. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$549,884 for FY 10-11, \$522,253 for FY 11-12, and \$540,184 for FY 12-13. It is anticipated that \$123 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that

additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the January 22, 2010 emergency rule which amended the provisions governing the reimbursement methodology for non-emergency ambulance transportation services to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$735,696 for FY 10-11, \$757,767 for FY 11-12 and \$780,500 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to non-emergency ambulance transportation services providers. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

Anthony Keck  
Secretary  
1008#118

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Medical Transportation Program  
Non-Emergency Medical Transportation  
Reimbursement Rate Reduction  
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing non-emergency medical transportation to increase the reimbursement rates (*Louisiana Register*, Volume 34, Number 5). As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 36, *Louisiana Register Vol. 36, No. 8 August 20, 2010*

Number 2). This proposed Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXVII. Medical Transportation Program**

**Chapter 5. Non-Emergency Medical Transportation**

**Subchapter D. Reimbursement**

**§573. Non-Emergency, Non-Ambulance  
Transportation**

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for non-emergency, non-ambulance medical transportation services shall be reduced by 5 percent of the rates in effect on January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Implementation of these provisions may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

**Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

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

**RULE TITLE: Medical Transportation Program  
Non-Emergency Medical Transportation  
Reimbursement Rate Reduction**

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Mental Health Rehabilitation Program  
Reimbursement Rate Reduction  
(LAC 50:XV.901)

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

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of \$104,087 for FY 10-11, \$132,225 for FY 11-12 and \$134,920 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$308,625 for FY 10-11, \$293,207 for FY 11-12 and \$303,274 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the January 22, 2010 emergency rule which reduced the reimbursement rates for non-emergency medical transportation services (approximately 278,419 service units). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medical Transportation Program by approximately \$413,040 for FY 10-11, \$425,432 for FY 11-12 and \$438,194 for FY 12-13.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made for non-emergency medical transportation services. The reduction in payments may adversely impact the financial standing of providers, and could possibly cause a reduction in employment opportunities.

Anthony Keck  
Secretary  
1008#119

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which reduced the reimbursement rates paid for mental health rehabilitation services and established service limitations (*Louisiana Register*, Volume 35, Number 8). A final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates paid for mental health rehabilitation services (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 1. Mental Health Rehabilitation**

**Chapter 9. Reimbursement**

**§901. Reimbursement Methodology**

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement rates for Mental Health Rehabilitation services shall be reduced by 1.62 percent of the rates on file as of January 21, 2010.

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

**HISTORICAL NOTE:** Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 36:1249 (June 2010), LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

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

#### **RULE TITLE: Mental Health Rehabilitation Program—Reimbursement Rate Reduction**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of \$135,423 for FY 10-11, \$171,969 for FY 11-12 and \$175,475 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$401,442 for FY 10-11, \$381,340 for FY 11-12 and \$394,433 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent.

The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the January 22, 2010 emergency rule which further reduced the reimbursement rates for mental health rehabilitation services (approximately 8,044 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$537,193 for FY 10-11, \$553,309 for FY 11-12 and \$569,908 for FY 12-13.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made for mental health rehabilitation services. The reduction in payments may adversely impact the financial standing of providers, and could possibly cause a reduction in employment opportunities.

Anthony Keck  
Secretary  
1008#120

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Multi-Systemic Therapy—Prior Authorization and  
Reimbursement Rate Reduction  
(LAC 50:XV.25305 and 25701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XV.25305 and to amend §25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for multi-systemic therapy (MST) to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall, the department promulgated an Emergency Rule which amended

the provisions governing MST to further reduce the reimbursement rates and to establish prior authorization requirements (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XV. Services for Special Populations**

##### **Subpart 17. Multi-Systemic Therapy**

#### **Chapter 253. Services**

##### **§25305. Prior Authorization**

A. Effective for dates of service on or after January 22, 2010, prior authorization is required for services in excess of 244 units or four months.

1. Proof of medical necessity must be submitted in accordance with department guidelines.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 36:

#### **Chapter 257. Reimbursement**

##### **§25701. Reimbursement Methodology**

A. - B. ...

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for multi-systemic therapy services shall be reduced by 5 percent of the rates on file as of January 21, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services financing, LR 35:247 (February 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1250 (June 2010), amended LR 36:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### **Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally

or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

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

#### **RULE TITLE: Multi-Systemic Therapy—Prior Authorization and Reimbursement Rate Reduction**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of approximately \$267,065 for FY 10-11, \$338,932 for FY 11-12 and \$345,842 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$791,359 for FY 10-11, \$751,583 for FY 11-12 and \$777,388 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the January 22, 2010 emergency rule governing multi-systemic therapy (MST) which further reduced the reimbursement rates and established prior authorization requirements (approximately 1,785 recipients). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$1,058,752 for FY 10-11, \$1,090,515 for FY 11-12 and \$1,123,230 for FY 12-13.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made for multi-



systemic therapy services. The reduction in payments may adversely impact the financial standing of providers, and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicare Director  
1008#121

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing

#### Nursing Facilities—Reimbursement Rate Reduction (LAC 50:VII.1305)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:VII.1305 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law.” This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the per diem rates and wage enhancement payments (*Louisiana Register*, Volume 35, Number 7). The department amended the July 3, 2009 rate reduction Emergency Rule to repeal the per diem rate reduction and continued the wage enhancement reduction (*Louisiana Register*, Volume 35, Number 10). The final Rule was published July 20, 2010 (*Louisiana Register*, Volume 36, Number 6). As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the per diem rate paid to non-state nursing facilities (*Louisiana Register*, Volume 36, Number 2). The department subsequently amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates which were increased on July 1, 2010 as a result of the FY 2009-10 rebasing (*Louisiana Register*, Volume 36, Number 3). The March 20, 2010 Rule also clarified the provisions governing the reimbursement methodology for state-owned or operated nursing facilities and non-state, government-owned or operated nursing facilities. The department promulgated an Emergency Rule which amended the January 22, 2010 Emergency Rule to clarify the reduction of the per diem rate (*Louisiana Register*, Volume 36, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2010 Emergency Rule.

## Title 50 PUBLIC HEALTH—MEDICAL ASSISTANCE Part VII. Long Term Care Services Subpart 1. Nursing Facilities

### Chapter 13. Reimbursement

#### §1305. Rate Determination

A. - E. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement paid to non-state nursing facilities shall be reduced by 1.5 percent of the per diem rate on file as of January 21, 2010 (\$1.95 per day).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

#### Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

#### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Nursing Facilities Reimbursement Rate Reduction

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

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic savings to the state of approximately \$3,495,420 for FY 10-11, \$4,433,519 for FY 11-12, and \$4,523,915 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance

Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$10,353,632 for FY 10-11, \$9,831,342 for FY 11-12, and \$10,168,892 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the provisions of the May 20, 2010 emergency rule which amended the January 22, 2010 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rate paid to non-state nursing facilities. It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$13,849,380 for FY 10-11, \$14,264,861 for FY 11-12 and \$14,692,807 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to non-state nursing facilities. The reduction in payments may adversely impact the financial standing of nursing facilities and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1008#122

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Prosthetics and Orthotics—Reimbursement Rate Reduction  
(LAC 50:XVII.501)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior

authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law.” This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:9530 et seq.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9). As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which further reduced the reimbursement rates for prosthetic and orthotic devices (*Louisiana Register*, Volume 35, Number 8). The final Rule was published June 20, 2010 (*Louisiana Register*, Volume 36, Number 6).

As a result of a continuing budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for prosthetics and orthotics to reduce the reimbursement rates (*Louisiana Register*, Volume 36, Number 2). The department amended the provisions of the January 22, 2010 Emergency Rule in order to revise the formatting of LAC 50:XVII.501 to place these provisions in the proper location in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2010 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XVII. Prosthetics and Orthotics**

**Subpart 1. General Provisions**

**Chapter 5. Reimbursement**

**§501. Reimbursement Methodology**

A. - E.1. ...

F. Effective for dates of service on or after January 22, 2010, the reimbursement for prosthetic and orthotic devices shall be reduced by 5 percent of the fee amounts on file as of January 21, 2010.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), amended LR 36:1253 (June 2010), LR 36:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

**Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box

91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule

### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Prosthetics and Orthotics—Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in an estimated programmatic savings to the state of approximately \$71,126 for FY 10-11, \$90,418 for FY 11-12, and \$92,262 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$210,995 for FY 10-11, \$200,504 for FY 11-12, and \$207,388 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule is being promulgated to continue the May 20, 2010 emergency rule which amended the provisions of the January 22, 2010 emergency rule which reduced the reimbursement rates for prosthetics and orthotics (approximately 29,742 service units). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$282,449 for FY 10-11, \$290,922 for FY 11-12 and \$299,650 for FY 12-13.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to prosthetics and orthotics providers. The reduction in payments may adversely impact the financial standing of prosthetics and orthotics providers and could possibly cause a reduction in employment opportunities.

Anthony Keck  
Secretary  
1008#124

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Food Processing Plans, Food Recall Plans and Positive Test Result Reporting (LAC 51: VI.101, 125, 127, and 129)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), intends to amend Part VI (Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics) of the Louisiana State Sanitary Code (LAC 51). This Rule is being proposed to implement the requirements of Act 341 of the 2009 Regular Session. The major impetus behind this proposed Rule is to require food processing plants to maintain written food processing plans and food recall plans and to mandate notification of the department if laboratory testing reveals contamination of manufactured foods or finished ingredients.

### Title 51

### PUBLIC HEALTH—SANITARY CODE

### Part VI. Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics

### Chapter 1. General Regulations, Definitions, Permits, Registration, Machinery, Equipment and Utensils, Premises and Buildings, Temperature Control

### §101. Definitions [formerly paragraph 6:001]

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of the sanitary code, and all other Chapters which are adopted or may be adopted, are defined for the purposes thereof as follows.

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*CCP*—see Critical Control Point.

*Confirmed Positive Test Result*—any result obtained from a laboratory test of an ingredient, equipment, container, or finished product that indicates the presence of an adulterant, as defined by R.S. 40: 607 et seq., in excess of any tolerance specified in state or federal law or regulations.

*Control*—to manage the conditions of an operation to maintain compliance with established criteria, *control* also means that correct procedures are being followed and criteria are being met.

*Control Measure*—any action or activity that can be used to prevent, eliminate, or reduce a significant *hazard* that is managed as a *critical control point*.

*Control Point*—any step at which biological, chemical or physical factors can be controlled.

*Corrective Action*—procedures followed when a *deviation* occurs.

\* \* \*

*Critical Control Point (CCP)*—a step at which *control* can be applied and is essential to prevent or eliminate a *food*, *drug*, or *cosmetic safety hazard* or reduce it to an acceptable level.

*Critical Limit*—the value(s) to which a biological, chemical or physical parameter must be controlled at a *CCP* to prevent, eliminate or reduce to an acceptable level the occurrence of a *food*, *drug*, or *cosmetic safety hazard*.

*Deviation*—a failure to meet a *critical limit*.

\* \* \*

*Food Processing Plant*—a commercial operation that manufactures *food* for human consumption and does not provide *food* directly to a consumer from that location. Such term shall not include a commercial operation that produces raw agricultural commodities and whose end product remains a raw agricultural product.

*GMP*—see *good manufacturing practices*.

*Good Manufacturing Practices*—practices, methods, and controls used in the manufacturing, processing, packing or holding of *foods*, *drugs* or *cosmetics* that comply with the requirements in this Part and for *foods*, with 21 CFR 110.10, 110.19, 110.20, 110.35, 110.37, 110.40, 110.80, and 110.93, to assure that *foods*, *drugs* or *cosmetics* for human consumption or use are safe and have been prepared, packed and held under sanitary conditions.

*HAACP*—see *hazard analysis critical control point*.

*HAACP Plan*—the written document which is based upon the principles of *HACCP* and which delineates the procedures to be followed.

*HACCP System*—the implemented *HACCP plan* and *pre-requisite programs* including any other applicable requirements.

*Hazard*—a biological, chemical, radiological or physical agent that is reasonably likely to cause illness or injury in the absence of its *control*.

*Hazard Analysis Critical Control Point (HAACP)*—a systematic approach to the identification, evaluation and control of significant *food*, *drug*, or *cosmetic safety hazards*.

\* \* \*

*Monitor*—to conduct a planned sequence of observations or measurements to assess whether a *CCP* is under control or to assess the conditions and practices of all required *pre-requisite Programs (PPs)* and to produce an accurate record for future use in *verification*.

\* \* \*

*PP*—see *Pre-requisite Program*.

*Pre-requisite Program (PP)*—procedures, including *good manufacturing practices*, that address operational conditions providing the foundation for the *HACCP system*.

\* \* \*

*State Health Officer*—the legally appointed or acting State Health Officer of the Department of Health and Hospitals having jurisdiction over the entire state of

Louisiana, and includes his/her duly authorized representative in accordance with R.S. 40:4 and 40:5.

*Validation*—the element of *verification* focused on collecting and evaluating scientific and technical information to determine whether the *HACCP plan*, when properly implemented, will effectively control the *hazards*.

*Verification*—those activities, other than *monitoring*, that determine the validity of the *HACCP plan* and that the system is operating according to the plan.

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with R.S. 40:4(A)(1)(a) and R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21). Also see R.S. 40:601 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1230 (June 2002), amended LR 36:

#### §125. Food Processing Plan

A. This Section shall become effective on January 1, 2011.

B. All food processing plants operating within the state of Louisiana shall maintain on-site a written food processing plan that shall be available for review upon request by the State Health Officer.

C. The food processing plan shall include, at a minimum, the following information:

1. a list of processing steps used to manufacture products, including potential biological, chemical, radiological or physical hazards that may be inherent to or introduced to the product at each step;
2. a description of preventative controls used in each step to control listed hazards;
3. a description of monitoring methods used to verify efficacy of preventative controls;
4. records of any corrective actions taken as a result of such monitoring; and,
5. records of any amendments to the plan as a result of corrective actions.

D. Any food processing plant that currently holds and maintains a *HACCP plan* meeting the requirements of United States Department of Agriculture or Food and Drug Administration regulations shall be considered to be in compliance with this Section.

E. Any person or firm operating a food processing plant that violates the provisions of this Section shall be subject to a civil fine of not more than \$500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21) and R.S. 40:652.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

#### §127. Food Recall Plan

A. This Section shall become effective on January 1, 2011.

B. General. All food processing plants operating within the state of Louisiana shall maintain a written food recall plan that shall be available for review upon request by the state health officer. The owners and operators shall amend their written food recall plan with any recommendations deemed necessary by the state health officer to make such plan effective for food safety concerns.

C. Notification. The food recall plan shall include, at a minimum, the provision for notification of representatives of the Food and Drug Unit of the Office of Public Health of the Department of Health and Hospitals. In addition, for any products subject to recall that may have been involved in interstate commerce, the food recall plan shall have additional provisions to notify the Food and Drug Administration. Notification shall include, at a minimum, the following information:

1. the identity of the product(s) under recall, including name and lot number or batch code,
2. the reason for the recall,
3. the date and means of discovery of the reason for the recall,
4. total amount of product and amount estimated to be in distribution,
5. list of consignees that have or may have received affected product,
6. contact information for a responsible person at the firm who will oversee the recall, and,
7. proposed strategy for conducting the recall.

D. Suppliers and Consignees. The food processing plant shall maintain a current list of suppliers and consignees for all ingredients and finished goods used in the manufacturing or distribution of the firm's products. Such list(s) shall be available for review by the state health officer.

E. Communication with the Public. The food recall plan shall include the proposed mode(s) of public communication including, as necessary, telephone, letter, website, and media outlet (newspaper, television, radio, and/or other sources) notifications.

F. Level(s) of Recall. The food recall plan shall include a method or procedure for evaluating whether the recall needs to be conducted at the wholesale, retail, or consumer levels, or if some combination is appropriate.

G. Effectiveness Checks. The food recall plan shall include provisions for conducting effectiveness checks, at the appropriate level(s) as determined necessary in Subsection F of this Section, by means of telephone interviews, site visits, or other effective means of communication.

H. Post Recall Evaluation. The food recall plan shall require a re-evaluation of all elements of the recall plan after a recall has been conducted to correct deficiencies or enhance overall effectiveness.

I. Nothing in this Section shall prevent the state health officer from exercising his authority to protect the public from adulterated or misbranded products by seizure and/or destruction of defective products in accordance with R.S. 40:632 and §105.D of this Chapter.

J. Any person or firm operating a food processing plant that violates the provisions of this Section shall be subject to a civil fine of not more than \$500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4(A)(1)(a), R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21) and R.S. 40: 653.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

### **§129. Laboratory Test Reporting Requirements and Additional Test Mandate**

A. When a person or firm operating a food processing plant in the state of Louisiana receives information from an

in-house or external laboratory analyzing samples or specimens of finished foods or finished ingredients which indicates a confirmed positive test result signifying that the food or ingredient may be adulterated (in accordance with the definitions provided in R.S. 40:607, et seq.) or may otherwise constitute an imminent health hazard, the person or firm shall report this confirmed positive test result to representatives of the Food and Drug Unit of the Office of Public Health of the Department of Health and Hospitals within 24 hours of obtaining such information.

B. The state health officer may, based upon a demonstration of probable cause by the Department of Health and Hospitals indicating that a food processing plant is producing food which may be adulterated (in accordance with the definitions provided in R.S. 40:607 et seq.) or in such a manner as to cause an imminent health hazard, order the food processing plant to submit samples to a laboratory specified by the department for testing at the food processing facility's expense. A copy of the written or electronic results of such testing, including a reference to test methods used, shall be furnished by the food processing plant or by the laboratory to the department as soon as a confirmed test result (either positive or negative) is available but no later than 24 hours of obtaining such information.

C. Any person or firm operating a food processing plant that violates the provisions of this Section shall be subject to a civil fine of not more than \$1,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4(A)(1)(a), R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21) and R.S. 40: 654.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 36:

#### **Family Impact Statement**

1. The effect on the stability of the family. The goal of this Rule is to prevent disease and illnesses; therefore, a lower disease and illness rate of family members because of this Rule should help the family to remain stable.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. No effect on the authority and rights of parents regarding the education and supervision of their children is anticipated as a result of this proposed rulemaking.

3. The effect on the functioning of the family. The goal of this Rule is to prevent disease and illnesses; therefore, a lower disease and illness rate of family members because of this Rule should help the family to function better than it may should a family member become ill if such Rule did not exist.

4. The effect on the family earnings and family budget. It is expected that family members would remain more healthy with the adoption of this rule than if such Rule did not exist; therefore, the family earnings and budget may be protected from additional costs should a family member become ill if such Rule did not exist.

5. The effect on the behavior and personal responsibility of children. No effect on the behavior and personal responsibility of children is anticipated as a result of this proposed rulemaking.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. The family or local governments have no function to perform

under this Rule; therefore, the family or local government's ability to perform the function under this Rule is a non-issue.

**Public Hearing**

DHH-OPH will conduct a public hearing at 10:00 am on Friday, September 24, 2010, in the Multi-Purpose Room of the Louisiana State Museum, 660 North 4th Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between N. 6th and N. 5th/North and Main Sts. (catercorner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

**Public Comments**

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Wednesday, September 29, 2010 at COB, 4:30 pm, and should be addressed to Brian R. Warren, Food and Drug Unit, Center for Environmental Health Services, Office of Public Health, CEHS Mail Bin # 10, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7672. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 N. 4<sup>th</sup> Street - Room 166, Baton Rouge, LA 70802.

Alan Levine  
Secretary

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

**RULE TITLE: Food Processing Plans, Food Recall  
Plans and Positive Test Result Reporting**

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

The proposed rule amends Part VI Section 105 (Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics) of the State Sanitary Code (LAC 51) and adds Sections 125, 127 and 129. These changes are pursuant to Act 341 of the 2009 Regular Session.

The first proposed rule change in Section 105 adds definitions relative to food safety. The second proposed rule change adds Section 125 to require that food processing plants maintain written food processing plans that outline the operations involved in the manufacture of the firm's products. The third proposed rule change adds Section 127 to require that food processing plants maintain written food recall plans containing elements that will mandate departmental notification of any recalls; and will allow for the thorough and expeditious recall of products that may have become adulterated, misbranded, or otherwise potentially injurious to the public. The fourth proposed rule change adds Section 129 to require reporting and testing of adulterated food by food processing plants and grants the state health officer the authority to require firms to conduct specific laboratory tests and provide copies of the results to the department where compelling evidence exists that the firm may be producing adulterated food products.

It is not anticipated that the proposed action will have any significant impact on local governmental units as all food processing plants are regulated by the DHH Food and Drug Unit of the Office of Public Health.

The proposed changes will result in an estimated state cost of \$1,148 to publish the notice of intent and the final rule in the *Louisiana Register*. This is a one-time cost that is included in the agency's budget.

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

The proposed rule allows the Office of Public Health to impose fines of up to \$500 for violation of Section 125 and 127 and up to \$1,000 for violation of Section 129 which could potentially increase the agency's self-generated revenues. The amount of this increase cannot be determined because neither the number of violations or the amount of the actual fines that will be imposed is known at this time.

Also, it is possible that a small number of state-operated entities that may be governed by the proposed regulation may experience a minimal fiscal impact if the entities are maintained in a state of noncompliance. The amount of this impact cannot be determined because neither the number of violations nor the amount of the actual fines to be imposed is known at this time.

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

The power of the state health officer to authorize specific testing where evidence indicates that a firm may be producing adulterated food products could possibly result in food processing plants having to incur additional costs for laboratory testing. This cost could range from twenty to several hundred dollars per sample depending on the type of test required.

In addition, this rule could potentially result in civil fines up to \$500 for violations of Section 125 and 127 and up to \$1,000 for violations of Section 129 for any person operating a food processing plant that does not comply with the respective rule provisions.

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

There are no effects on competition and employment anticipated as a result of promulgation of this regulation.

Clayton Williams  
Assistant Secretary  
1008#094

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Practical Nurse Examiners**

Adjudication, Definitions, Licensure Qualifications, and Name Change (LAC 46:XLVII.306, 501, 1701, and 1709)

The Board of Practical Nurse Examiners proposes to amend LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979. No preamble has been prepared.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 1. Practical Nurses**

**Chapter 3. Board of Practical Nurse Examiners**

**§306. Adjudication Proceedings**

A. - G. ...

H. The formal complaint shall be sent by mail, at least 20 days, including weekends and holidays, prior to the hearing date, to the last known address of the respondent. It is the licensee's obligation and duty to keep the board informed of his/her whereabouts.

I. - P. ...

Q. The board shall make a decision based on the entire record, including the hearing officer's report and determine what sanctions, if any, should be imposed and issue an appropriate order with respect thereto. This order of the board shall be sent to the respondent by mail.

R. - V. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:978 and Acts 675 and 827, 1993.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 2:275 (September 1976), amended LR 3:193 (April 1977), LR 10:336 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 20:663 (June 1994), LR 26:2614 (November 2000), LR 28:2353 (November 2002), LR 30:1478 (July 2004), LR 34:1912 (September 2008), LR 35:1247 (July 2009), LR 35:2757 (December 2009), LR 36:

## **Chapter 5. Definitions**

### **§501. Terms in the Manual**

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*Survey*—periodic review of a practical nursing program by the board to determine compliance with the adopted minimum requirements contained herein.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:193 (April 1977), amended LR 10:337 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 26:2617 (November 2000), LR 32:637 (April 2006), LR 36:

## **Chapter 17. Licensure**

### **§1701. Qualifications**

A. A person applying for a license to practice as a practical nurse in the state of Louisiana shall:

1. be of good moral character;
2. be a graduate of an accredited program in practical nursing;
3. attain a score of 350 or above for those writing the board-approved licensure examination for practical nursing prior to October 1988, or a result of "Pass" for those writing the examination in October 1988 and beyond;
4. complete and submit the required application accompanied by the specified fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:970.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:199 (April 1977), amended LR 10:341 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1129 (October 1992), repromulgated LR 18:1263 (November 1992) amended LR 36:

### **§1709. Name Change**

A. A licensee requesting a name change on the license form shall forward a request to the board accompanied by a certified and true copy of a legal document. Licensees shall sign all practice related documents legibly using the name printed on the license.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:200 (April 1977), amended LR 10:342 (April 1984), LR 36:

### **Family Impact Statement**

The proposed amendments to LAC 46:XLVII.Subpart 1. should not have any impact on family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

### **Public Comments**

Interested persons may submit written comments to Claire Doody Glaviano, Executive Director, Board of Practical Nurse Examiners, 3421 N. Causeway, Ste. 505, Metairie, LA 70002. All comments must be submitted by 3:30 p.m., September 10, 2010.

Claire Doody Glaviano  
Executive Director

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

### **RULE TITLE: Adjudication, Definitions, Licensure Qualifications, and Name Change**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Other than the rule publication costs, which are estimated to be \$400 in fiscal year 2011, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Practical Nurse Examiners, any state unit or local governmental unit.

The current board requirement in §306.H. and §306.Q., that notices and orders be sent by certified mail, creates delays in the adjudication processes and provides a legal loophole for practical nurses when these nurses choose not to pick up, sign for, or otherwise accept delivery of the certified mail item. Removing the requirement to use certified mail closes the legal loophole while allowing the board the option to supplement regular mailing with registered mail and/or certified mail delivery. However, the board will continue to send correspondence by certified mail, despite removing the regulatory requirement to do so.

There are occasions when review of a program by the board need only consist of submission of records and filing of reports. The proposed amendment to §501 allows the board the option, when appropriate, to conduct program surveys via reports submitted electronically or by mail. However, the board anticipates no changes in the number of program reviews/inspections conducted in the field and will target such field reviews/inspections on programs that are most likely failing to meet the board's minimum requirements.

Currently, some practical nurses are licensed under one name (such as their maiden name) and they are signing practice documents with a different name (such as a married name). When the board receives a report of a practice violation, it is sometimes difficult to locate these nurses in the files of the board office. The proposed amendment to §1709 adds the requirement that licensees sign all practice related documents using the name that is printed on the practical nursing license.

This change will allow the board to timely process and investigate reports of alleged practice violations, but should not have a significant impact on the Board's staffing or costs.

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

The proposed rule will have no effect on revenue collections of state or local governmental units.

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

The proposed rule will have no significant effect on costs and/or economic benefits to directly affected persons, or nongovernmental groups.

The proposed amendment to §1701 removes the language regarding citizenship requirements for licensure from the rule. Citizenship requirements for licensure are in the statute and need not be repeated in rule. Acts 553 (SB 591) of the 2010 Regular Legislative Session removed a requirement that Practical Nurse applicants be citizens of the United States or have taken out their first citizenship papers. Instead, Act 553 requires that applicants be a permanent resident or citizen of the United States. However, this proposed change will not affect the number of Practical Nursing applicants because the board has required that applicants be permanent residents or citizens prior to the passage of Act 553.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Claire Doody Glaviano  
Executive Director  
1008#064

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-10/11 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-09/10.

#### Title 43

#### NATURAL RESOURCES

#### Part XIX. Office of Conservation—General Operations

#### Subpart 2. Statewide Order No. 29-R

#### Chapter 7. Fees

#### §701. Definitions

*Application Fee*—an amount payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by industries under the jurisdiction of the Office of Conservation.

*Application for Automatic Custody Transfer*—an application for authority to measure and transfer custody of liquid hydrocarbons by the use of methods other than

customary gauge tanks, as authorized by Statewide Order No. 29-G-1 (LAC 43:XVII.2304 et seq.), or successor regulations.

*Application for Commercial Class I Injection Well*—an application to construct and/or operate a commercial Class I injection well, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

*Application for Commercial Class I Injection Well (Additional Wells)*—an application to construct and/or operate additional Class I injection wells within the same filing, as authorized by Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

*Application for Commercial Class II Injection Well*—an application to construct and/or operate a commercial Class II injection well, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

*Application for Commercial Class II Injection Well (Additional Wells)*—an application to construct and/or operate additional Class II injection wells within the same filing, as authorized by Statewide Order No. 29-B (LAC 43:XIX.401 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

*Application for Multiple Completion*—an application to multiple complete a new or existing well in separate common sources of supply, as authorized by Statewide Order N. 29-C-4 (LAC 43:XIX.1301 et seq.), or successor regulations.

*Application for Non Commercial Injection Well*—an application to construct and/or operate a Class I, II, III, or V noncommercial injection well, as authorized by Statewide Order Nos. 29-B (LAC 43:XIX.401 et seq.), 29-M (LAC 43:XVII.301 et seq.), 29-N-1 (LAC 43:XVII.101 et seq.), 29-N-2 (LAC 43:XVII.201 et seq.), 29-M-2 (LAC 43:XVII.3101 et seq.), successor regulations.

*Application for Permit to Drill (Minerals)*—an application to drill in search of minerals (six-months or one-year), as authorized by R.S. 30:28.

*Application for Public Hearing*—an application for a public hearing as authorized by R.S.30:1, et. seq.

*Application for Site Clearance*—an application to approve a procedural plan for site clearance verification of platform, well or structure abandonment developed by an operator/lessee and submitted to the Commissioner of Conservation, as authorized by LAC 43:XI.311 et seq., or successor regulations.

*Application for Substitute Unit Well*—an application for a substitute unit well as authorized by Statewide Order No. 29-K-1 (LAC 43:XIX.2901 et seq.), or successor regulations.

*Application for Surface Mining Development Operations Permit*—an application to remove coal, lignite, or overburden for the purpose of determining coal or lignite quality or quantity or coal or lignite mining feasibility, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

*Application for Surface Mining Exploration Permit*—an application to drill test holes or core holes for the purpose of determining the location, quantity, or quality of a coal or lignite deposit, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.



*Application for Surface Mining Permit*—an application for a permit to conduct surface coal or lignite mining and reclamation operations, as authorized by Statewide Order No. 29-O-1 (LAC 43:XV.101 et seq.), or successor regulations.

*Application for Unit Termination*—an application for unit termination as authorized by Statewide Order No. 29-L-3 (LAC 43:XIX.3100 et seq.), or successor regulations.

*Application to Amend Permit to Drill (Injection or Other)*—an application to alter, amend, or change a permit to drill, construct and/or operate an injection, or other well after its initial issuance, as authorized by R.S. 30:28.

*Application to Amend Permit to Drill (Minerals)*—an application to alter, amend, or change a permit to drill for minerals after its initial issuance, as authorized by R.S. 30:28.\*

\*Application to Amend Operator (transfer of ownership, including any other amendment action requested at that time) for any orphaned well, any multiply completed well which has reverted to a single completion, any non-producing well which is plugged and abandoned within the time frame directed by the commissioner, as well as any stripper crude oil well or incapable gas well so certified by the Department of Revenue shall not be subject to the application fee provided herein.

*Application to Commingle*—an application for authority to commingle production of gas and/or liquid hydrocarbons and to use methods other than gauge tanks for allocation, as authorized by Statewide Order No. 29-D-1 (LAC 43:XIX.1500 et seq.), or successor regulations.

*Application to Process Form R-4*—application for authorization to transport oil from a lease as authorized by Statewide Order No. 25 (LAC 43:XIX.900 et seq.), or successor regulations.

*BOE*—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 13.0.

*Capable Gas*—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2009.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2009.

*Class I Well*—a Class I injection well used to inject hazardous or nonhazardous, industrial, or municipal wastes into the subsurface, which falls within the regulatory purview of Statewide Order No. 29-N-1 (LAC 43:XVII.101 et seq.), Statewide Order No. 29-N-2 (LAC 43:XVII.201 et seq.), or successor regulations.

*Class I Well Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class I wells in an amount not to exceed \$400,000 for Fiscal Year 2000-2001 and thereafter.

*Class II Well*—a Class II injection well which injects fluids which are brought to the surface in connection; with conventional oil or natural gas production, for annular disposal wells, for enhanced recovery of oil or natural gas, and for storage of hydrocarbons. For purposes of administering the exemption provided in R.S. 30:21(B)(1)(c), such exemption is limited to operators who operate Class II wells serving a stripper oil well or an incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Section of the Department of Revenue and located in the same field as such Class II well.

*Class III Well*—a Class III injection well which injects for extraction of minerals or energy.

*Emergency Clearance*—emergency authorization to transport oil from lease.

*Production Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity on a dollar amount between the wells. The tiered system shall be established annually by rule on capable oil and capable gas production, including nonexempt wells reporting zero production during the annual base period, in an amount not to exceed \$2,450,000 for fiscal year 2002/2003 and thereafter.

*Production Well*—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2009.

*Regulatory Fee*—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Section of the Department of Revenue as of December 31, 2009, and located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

*Type A Facility*—commercial E and P waste disposal facilities within the State that utilize technologies appropriate for the receipt, treatment, storage, or disposal of oilfield waste solids and liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:CIC.501 et seq.), Statewide Order No. 29-M-2 (LAC 43:XVII.3101 et seq.), or successor regulations.

*Type B Facility*—commercial E and P waste disposal facilities within the State that utilize underground injection technology for the receipt, treatment, storage, or disposal of only produced saltwater, oilfield brine, or other oilfield waste liquids for a fee or other consideration, and fall within the regulatory purview of Statewide Order No. 29-B (LAC 43:XIX.501 et seq.), or successor regulations.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009). LR 36:

**§703. Fee Schedule for Fiscal Year 2010-2011**

A. Fee Schedule

Application Fees	Amount
Application for Unit Termination	\$ 252
Application for Substitute Unit Well	\$ 252
Application for Public Hearings	\$ 755
Application for Multiple Completion	\$ 126
Application for Commingle	\$ 252
Application for Automatic Custody Transfer	\$ 252
Application for Noncommercial Injection Well	\$ 252
Application for Commercial Class I Injection Well	\$ 1,264
Application for Commercial Class I Injection Well (Additional Wells)	\$ 631
Application for Commercial Class II Injection Well	\$ 631
Application for Commercial Class II Injection Well (Additional Wells)	\$ 314
Application for Permit to Drill—Minerals: 0'-3,000' (6 months)	\$ 126
Application for Permit to Drill—Minerals: 3,001'-10,000' (6 months)	\$ 631
Application for Permit to Drill—Minerals: 10,001'+ (6 months)	\$ 1,264
Application for Permit to Drill—Minerals: 0'-3,000' (1 year)	\$ 252
Application for Permit to Drill—Minerals: 3,001'-10,000' (1 year)	\$ 1,262
Application for Permit to Drill—Minerals: 10,001'+ (1 year)	\$ 2,528
Drill Minerals Deeper (> 3,000') (1 year)	\$ 1,008
Drill Minerals Deeper (> 10,000') (year)	\$ 1,264
Drill Minerals Deeper (> 3,000') (1 year)	\$ 504
Drill Minerals Deeper (> 10,000') (year)	\$ 632
Application for Amend Permit to Drill—Minerals	\$ 126
Application for Permit to Drill—Injection or Other	\$ 126
Application for Surface Mining Exploration Permit	\$ 65
Application for Surface Mining Development Operations Permit	\$ 94
Application for Surface Mining Permit	\$ 2,212
Application to Process Form R-4	\$ 36
Application to Reinstate Suspended Form R-4	\$ 65
Application for Emergency Clearance Form R-4	\$ 65
Application for Site Clearance	\$ 600

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,942 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,471 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$704 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$704 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$11,111 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	18
Tier 2	1 - 5,000	98
Tier 3	5,001 - 15,000	284
Tier 4	15,001 - 30,000	467
Tier 5	30,001 - 60,000	742
Tier 6	60,001 - 110,000	1,027
Tier 7	110,001 - 9,999,999	1,271

E. Exceptions

1. Operators of record of each Class I injection/disposal well and each Type A and B commercial facility that is permitted, but has not yet been constructed, are required to pay an annual fee of 50 percent of the applicable fee for each well or facility.

2. Operators of record of each inactive Type A and B facility which have voluntarily ceased the receipt and disposal of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable Type A or B facility.

3. Operators of record of each inactive Type A or B facility which have voluntarily ceased the receipt and disposal of E and P waste, have completed Office of Conservation approved closure activities and are conducting a post-closure maintenance and monitoring program, are required to pay an annual Regulatory Fee of 25 percent of the annual fee for each applicable Type A or B facility.

F. Pipeline Safety Inspection Fees

1. Owners/operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$22.40 per mile, or a minimum of \$400, whichever is greater.

2. Owners/operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$22.40 per mile, or a minimum of \$400, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2461 (November 2007), LR 34:2405 (November 2008), LR 35:2463 (November 2009), LR 36:

**§705. Failure to Comply**

A. Operators of operations and activities defined in §701 are required to timely comply with this order. Failure to comply by the due date of any required fee payment will subject the operator to civil penalties provided in Title 30 of the Louisiana Revised Statutes of 1950, including but not limited to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August

1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2501 (November 2003), LR 34:2406 (November 2008), LR 36:

#### **§707. Severability and Effective Date**

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-10/11 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This order (Statewide Order No. 29-R-10/11) supersedes Statewide Order No. 29-R-09/10 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:2464 (November 2009), LR 36:

#### **Family Impact Statement**

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rules will have no effect on family earnings and family budget.

5. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The proposed Rule will have no effect on the ability of the family or local government to perform any function as contained in the proposed Rule.

#### **Public Comments**

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Friday, October 1, 2010. Comments should be directed, in writing, to Todd Keating, Director, Engineering Division, Office of Conservation, P.O. Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 10-779 Proposed Statewide Order No. 29-R-10/11).

#### **Public Hearing**

A public hearing will be held at 9 a.m., Tuesday, September 28, 2010, in the LaBelle Hearing Room, located

on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh  
Commissioner

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

#### **RULE TITLE: Fees**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no implementation costs (savings) to state or local governmental units resulting from this action.

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

Proposed Statewide Order No. 29-R-10/11 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-09/10 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq. Consistent with Act 126 of the 2009 Regular Session, the Proposed Rule added one year drilling permit application fees to the fee schedule for all Application Fees. R.S. 30:21, R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. The Production Tier Fee in the FY 10/11 Fee Schedule has been increased an average 7.10% overall due to the decreased number of participating wells. The Regulatory Fees for Class I Injection Wells have been decreased an average 2.77% due to the increase in the number of wells; and, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have decreased by approximately 5.37% due to the increased number of wells and facilities. The Office of Conservation will collect approximately \$7,632,680.75 in revenue for these fees in FY 10/11.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,665 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 4,862 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). The Office of Conservation is authorized to collect a "fee not to exceed \$22.40 per mile, or a minimum of \$400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines. The proposed FY 10/11 fee will remain at the maximum fee authorized by statute. These fees are used as the matching funding for the Pipeline Safety Program's Federal Grants. The Office of Conservation is projected to collect approximately \$1,146,018.67 for the pipeline safety inspection fees in FY 10/11.

No local governmental units will be impacted by this action.

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

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No.

29-R-10/11 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately \$8,778,699.42 for FY 10/11.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-10/11 will have no effect on competition and employment.

Gary P. Ross  
Assistant Commissioner  
1008#050

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Professional Services Program—Family Planning Services  
Reimbursement Rate Reduction  
(LAC 50:IX.15141-15143)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15141-15143 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management and other measures as permitted under federal law.” This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement for family planning services rendered by physicians in the Professional Services Program. As a result of a budgetary shortfall in state fiscal year 2010, the department promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to reduce the reimbursement rates for family planning services and to promulgate these provisions in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 2). This proposed Rule is being promulgated to continue the provisions of the January 22, 2010 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 15. Reimbursement**

**Chapter 151. Reimbursement Methodology**

**Subchapter E. Family Planning Services**

**§15141. General Provisions (Reserved)**

**§15143. Reimbursement**

A. The reimbursement for family planning services shall be a flat fee for each covered service as specified on the

established Medicaid fee schedule. Fee schedule rates are based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

B. Family planning services are currently reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

C. Effective for dates of service on or after January 22, 2010, the reimbursement rates for family planning services rendered by a physician shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have an adverse impact on family functioning, stability or autonomy as described in R.S. 49:972 in the event that provider participation in family planning services is diminished as a result of reduced reimbursement rates.

**Public Comments**

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, September 29, 2010 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Anthony Keck  
Secretary

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

**RULE TITLE: Professional Services Program—Family  
Planning Services—Reimbursement Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of approximately \$79,876 for FY 10-11, \$101,516 for FY 11-12 and \$103,586 for FY 12-13. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 10-11 for the state’s administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match

would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$236,911 for FY 10-11, \$225,113 for FY 11-12 and \$232,842 for FY 12-13. It is anticipated that \$164 will be expended in FY 10-11 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 74.76 percent. The enhanced rate of 81.48 percent for the first six months of the fiscal year is authorized by the American Recovery and Reinvestment Act (ARRA) of 2009. To the extent that additional enhanced federal match would be available after December 2010 (end of the ARRA eligibility); state general fund match could be reduced in the current fiscal year.

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

This proposed rule continues the provisions of the January 22, 2010 emergency rule which amended the provisions governing the Professional Services Program to reduce the reimbursement rates for family planning services (approximately 84,395 recipients). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Professional Services Program by approximately \$317,115 for FY 10-11, \$326,629 for FY 11-12 and \$336,428 for FY 12-13.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made for family planning services. The reduction in payments may adversely impact the financial standing of providers, and could possibly cause a reduction in employment opportunities.

Don Gregory  
Medicaid Director  
1008#123

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Corrections Services**

**Attorney Visits (LAC 22:I.317)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of §317 Attorney Visits.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult Services**

**§317. Attorney Visits**

A. Purpose—to provide uniform procedures for the approval and conduct of visits by attorneys to offenders.

B. Applicability—deputy secretary, chief of operations, regional wardens and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all offenders, affected employees and attorneys seeking to visit.

C. Policy. It is the secretary's policy that attorney visits shall be conducted in accordance with the procedures of this regulation.

D. General

1. Offenders may refuse to see any attorney; such refusal shall be in writing and filed in the offender's master record.

2. A log shall be maintained of all visits by attorneys, paralegals, legal assistants, law clerks and investigators.

3. Visits may be visually observed, but conversations between offenders and counsel shall not, under any circumstance, be monitored.

4. Visits between death row offenders and attorneys, paralegals, legal assistants, law clerks and investigators may be non-contact at the warden's discretion.

5. Attorneys, paralegals, legal assistants, law clerks and investigators are subject to searches according to established procedures, as are all other visitors.

E. Procedures

1. Approval of Attorneys. An attorney's credentials shall be verified through the State Bar Association prior to being approved to visit or initiate privileged communication with offenders.

2. Approval of authorized representatives: Paralegals, legal assistants, law clerks and investigators may be permitted to enter the institution to conduct interviews with offender clients of their supervising attorney, either with the attorney or alone. Such permission is at the discretion of the warden, who may approve or disapprove these requests. Prior to a paralegal, legal assistant, law clerk or investigator being approved to enter the grounds of the institution, the following criteria shall be met by the employing attorney:

a. The paralegal, legal assistant, law clerk or investigator must not be on the visiting list of any offender confined in a state institution (except for immediate family members).

b. A paralegal must have completed a paralegal or legal assistant study program at an accredited four-year college or junior college, or have completed a paralegal or legal assistant study program approved by the American Bar Association. (Certification by the National Association of Legal Assistants, Inc. as a Certified Legal Assistant (CLA) may be substituted for the aforementioned programs.)

c. The employing or supervising attorney shall submit a paralegal, legal assistant, law clerk or investigator affidavit to the warden of the institution to be visited certifying the following prior to the approval for a paralegal, legal assistant, law clerk or investigator to enter institutional grounds:

i. the individual's name, social security number and birth date;

ii. the length of time the individual has been employed or supervised by the attorney;

iii. paralegals and investigators must attach a copy of their certification or license to the affidavit, if applicable.

iv. representatives of attorneys who seek authorization to visit a client on behalf of their supervising attorney, but do not possess a certificate and/or license shall not be authorized or approved except by special permission from the warden.

d. Paralegals, legal assistants, law clerks and investigators shall complete the department's "Orientation for Legal Representatives" training prior to being allowed to visit an offender. This training may be conducted using the automated presentation on the department's website or upon arrival at the institution for an approved visit. The person taking the training on-line shall be required to submit the printable certificate of training with their affidavit. The visit may be prohibited if the required training is not completed.

e. This information shall then be verified and the attorney notified of the disposition of the request. Thereafter, for a period not to exceed one year from the date of approval, as long as the paralegal, legal assistant, law clerk or investigator continues in the employ or under the supervision of the same attorney, visits may be approved.

3. Scheduling. Visits by attorneys and their authorized representatives shall be scheduled through the institution at least 24 hours in advance.

4. Time of Visits. Visits by attorneys and their authorized representatives must normally take place Monday through Friday, excluding holidays, between the hours of 8:00 a.m. and 4:00 p.m.

5. Exceptions

a. The warden may approve special visits not in conformity with Paragraphs E.1, 2, 3 and 4 when unusual circumstances warrant.

b. Any improper acts or unethical behavior with an offender during a visit may result in an attorney or their authorized representatives being denied future requests to visit an offender.

F. Limitations of Visits

1. Number of Offenders. Generally, no more than ten offenders may be seen at any one time, and no more than twenty on any one day. Further limitations may be imposed by the warden if valid reasons exist.

2. Number of Attorneys. Generally, no more than two persons (attorneys, paralegals, legal assistants, law clerks or investigators or any combination thereof) may see an offender on any one day; however, the number visiting at one time may be limited based on available space and security constraints. Exceptions may be approved for good cause by the warden.

G. Exception. Nothing contained in this regulation shall apply to attorneys representing the state, the department or the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 26:1313 (June 2000), amended LR 31:1098 (May 2005), LR 36:

**Family Impact Statement**

Amendment to the current Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Public Comments**

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on September 8, 2010.

James M. Le Blanc  
Secretary

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

**RULE TITLE: Attorney Visits**

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

The proposed rule change will have no impact on state or local government expenditures. This is a technical adjustment to an existing regulation regarding attorney visits with offenders.

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

There will be no impact on the Revenue Collections of state or local governmental units as a result of this technical adjustment.

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

There is no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this technical adjustment.

Thomas C. Bickham, III  
Undersecretary  
1008#084

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Liquefied Petroleum Gas Commission**

Emergency Powers of Director (LAC 55:IX:103 and 301)

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 40:1846 and with the Administrative Procedure Act., R.S. 49:950 et seq., and Act 211 of the 2009 regular session of the Louisiana Legislature, enacted as R.S. 40:1846(1) hereby gives notice of its intent to amend Sections 103, "Definitions" and Section 301 "Emergency Powers of Director." This text has been amended to comply with the above legislative Act to allow the Director of the Liquefied Petroleum Gas Commission the authority to suspend non safety related rules of the commission by the majority vote

of the commission when the governor has declared an emergency or disaster under R.S. 29:721 et seq.

#### **Title 55**

### **PUBLIC SAFETY**

## **Part IX. Liquefied Petroleum Gas**

### **Chapter 1. General Requirements**

#### **Subchapter A. New Dealers**

#### **§103. Definitions**

A. ...

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*Materially Affect Safety*—any action or inaction that significantly and adversely affects the public health, safety or welfare, whether caused by deliberate act or negligence.

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*State of Emergency or Disaster*—any event declared by the governor of the state by his authority under the "Louisiana Homeland Security And Emergency Assistance And Disaster Act" under R.S.39:721 et seq.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846(1).

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:459 (March 1998), LR 29:2508 (November 2003), LR 31:2556 (October 2005), LR 33:1139 (June 2007), effective July 1, 2007, LR 36:

### **Chapter 3. Emergency Powers**

#### **§301. Procedure**

A. During a declared emergency or disaster by the governor, the commission may delegate authority to the director for the purposes of waving any rule under Part IX of Title 55 that does not materially affect safety.

B. The delegation shall be by majority vote of the commission.

C. If the commission cannot meet in person to vote on the delegation due to an inability to travel because of the declared emergency or disaster, the director may make contact with each commissioner by any form of communications available at the time.

D. The director shall make a written record of each vote cast by the individual commissioners. This record shall contain:

1. the date of the vote;
2. the name of the commissioners available for vote;
3. the method of communication used to contact each commissioner including any contact information;
4. the affirmative or negative vote of each commissioner.

E. If the director cannot make contact with enough commissioners to make a quorum, he may act in on behalf of the commission during the declared emergency or disaster. Once the commission is able to meet, it shall review all exemptions granted by the director during the declared emergency or disaster. The commission may ratify any actions taken on behalf of the commission by the director.

F. The emergency powers of the director under this Section shall expire upon either of the following:

1. a majority vote of the commission;

2. the expiration of the declaration of emergency or disaster by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 36:

#### **Family Impact Statement**

1. The effect of this Rule on the stability of the family. These Rules should not have any effect on the stability of the family.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. These Rules should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. These Rules should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. These Rules should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed rules. These Rules should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

#### **Public Comments**

Interested persons may submit written comments to: Department of Public Safety, Office of Legal Affairs, c/o Paul Schexnayder, P.O. Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through September 15, 2010.

John W. Alario  
Executive Director

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

#### **RULE TITLE: Emergency Powers of Director**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There should be no additional costs incurred, nor savings realized, as a result of the adoption of these rules. The proposed rule simply gives the Executive Director the authority to suspend any rule promulgated by the Liquefied Petroleum Gas Commission during a declared state of emergency upon the majority vote of the L.P. Gas Commission.

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

There should be no effect on revenue collections as a result of this rule.

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

There should be no costs or economic benefits to any person or group, as a result of these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

These rules should not affect competition or employment.

John W. Alario  
Executive Director  
1008#091

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

**Motor Carrier Safety—Hazardous Materials  
(LAC 33:V10305)**

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1501 et seq., gives notice of its intent to amend its Rules regulating motor carrier safety and hazardous materials by excluding from Federal Motor Carrier Safety regulation those carriers, drivers, or vehicles with a single or combined gross vehicle weight rating of less than 26,001 pounds, and which carrier, driver, or vehicle is engaged in intrastate commerce. This adoption will bring the state of Louisiana in line with the majority of other states in relation to regulatory enforcement of adopted federal regulations.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Wastes and Hazardous Materials**

**Subpart 2. Department of Public Safety and  
Corrections—Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous  
Materials**

**§10305. Applicability of Regulations**

A. For the purpose of this Chapter, the federal regulations, as adopted or amended herein, shall govern all carriers, drivers, persons or vehicles:

1. to which the federal regulations apply;
2. engaged in the transportation of hazardous materials within this state.

B. For the purpose of this Chapter, the federal motor carrier safety regulations, as adopted or amended herein, shall also govern all carriers, drivers, persons or vehicles not subject to the federal regulations if the operated vehicle has a single or combined gross vehicle weight rating greater than 26,000 pounds and is used in commerce or industry.

C. The adopted federal regulations applicable to all carriers, drivers, persons or vehicles set forth in Subsections A and B of this Section shall be amended as follows.

1. For the adopted regulations governing all carriers, drivers or vehicles as specified in Subsection B, substitute "26,000 pounds" for all references made to "10,000 pounds."

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 14:298 (May 1988), LR 17:1115 (November 1991), repromulgated LR 18:78 (January 1992), amended LR 18:746 (July 1992), LR 20:58 (January 1994), LR 36:

**Family Impact Statement**

1. The effect of this Rule on the stability of the family. This Rule should not have any effect on the stability of the family.
2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.
4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.
5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.
6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

**Public Comments**

Interested persons may submit written comments to Paul Schexnayder, P.O. Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through September 15, 2010.

Jill Boudreaux  
Undersecretary

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

**RULE TITLE: Motor Carrier Safety  
Hazardous Materials**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There should be no additional costs incurred, nor savings realized, as a result of the adoption of these rules. The proposed rules exclude carriers, drivers, persons, and vehicles from adopted federal motor carrier safety regulations if the operated vehicle has a single or combined gross vehicle weight rating of less than 26,001 pounds and is engaged in intrastate commerce.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no effect on revenue collections of state or local governmental units as a result of these rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There should be no costs or economic benefits to any person or group, as a result of these rules. The proposed rule change
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
These rules should not affect competition or employment.

Jill Boudreaux  
Undersecretary  
1008#090

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office



## NOTICE OF INTENT

### Department of Public Safety and Corrections Office of State Police

Towing, Recovery and Storage (LAC 55:I.Chapter 19)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1711 et seq., gives notice of its intent to promulgate multiple and varied amendments to the regulatory requirements regarding the towing and storage industry. The sections to be amended are listed above.

#### Title 55

#### PUBLIC SAFETY

#### Part I. State Police

#### Chapter 19. Towing, Recovery, and Storage

#### Subchapter A. Authority, Exemptions, Definitions, Scope

#### §1903. Exemptions

A. These rules shall not apply to:

1. - 5.d. ...

e. ensure tow trucks are permanently and prominently marked on both side in lettering at least 2 1/2 inches in height and 1/4 inch in width with the company's legal name, city and "NOT FOR HIRE."

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:853 (May 2006), amended LR 36:

#### §1905. Definitions

A. The definitions found in the Louisiana Highway Regulatory Act, specifically R.S. 32:1 and the Towing and Storage Act, specifically, R.S. 32:1711 et seq., are applicable to these rules and shall have the same meaning indicated unless the context clearly indicates otherwise.

*Authorized Agent*—a suitable company authorized by the department in accordance with this Chapter to process and exchange the Official Report of Stored Vehicle information.

*Automobile Liability Coverage*—insurance which covers damage to property and/or personal injury to third parties.

*Deputy Secretary*—the deputy secretary of the Department of Public Safety and Corrections, Public Safety Services.

*Garage Keepers Legal Liability Insurance*—insurance which provides coverage to owners of storage facilities, garages, parking lots, body and repair shops, etc., for liability as bailees with respect to damage or loss to vehicles and contents left in their custody for safe keeping or repair.

*Garage Liability Insurance*—liability insurance covering storage facilities, automobile dealers, garages, repair shops, and service stations against claims of bodily injury and property damage that may arise through operation of such businesses.

*Gross Combination Weight Rating (GCWR)*—the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be

determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

*Gross Vehicle Weight Rating (GVWR)*—the value specified by the manufacturer as the loaded weight of a single motor vehicle.

*Law Enforcement Hold*—a hold placed on a specific vehicle by a law enforcement agency due that vehicle's evidentiary value in an active investigation.

*License Holder*—shall include, but not be limited to, a tow truck operator, towing service, storage facility or other entity requiring licensure pursuant to this Chapter.

*Nonconsensual Tow*—the towing of a motor vehicle without the prior consent or authorization of the motor vehicle owner or operator.

*Offending Vehicle*—the tow truck for which a violation of law, rule or regulation has been cited by the department and a administrative penalty has been assessed.

*Offense*—shall be synonymous with violation and mean any infraction of law, rule or regulation promulgated in accordance with this Chapter.

*On-Hook/In Tow Coverage*—insurance specifically covering tow truck operators when engaged in the recovery, towing or transporting of a vehicle.

*Owner*—the last registered owner of a vehicle as shown on the records of the Office of Motor Vehicles and/or the holder of any lien on a vehicle as shown on the records of the Office of Motor Vehicles and/or any other person who has a documented ownership interest in a vehicle.

*Place of Business*—a permanent structure located within Louisiana used for business, staffed during regular business hours, equipped with phone and utility services, and houses records and other appropriate or required documents.

*Responsible Party*—the principal person or business that is civilly liable or criminally culpable for the occurrence or commission of a violation of law, rule or regulation.

*Storage Area*—an approved building, structure, yard, or enclosure used for the purposes of storing vehicles in Louisiana.

*Storage Facility*—any business or company that receives direct or indirect compensation for storing vehicles in Louisiana.

*Tow Truck*—a motor vehicle equipped with a boom or booms, winches, slings, tilt beds, wheel lifts, under-reach equipment, and/or similar equipment including, but not limited to, trucks attached to trailers, tow dollies, and car carriers designed for the transportation and/or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 36:

#### §1907. Administrative Penalty Assessment; Arbitration; Recovery of Penalties

A. Administrative Penalty Assessment

1. A tow truck owner or operator, an employee or the agent of a tow truck owner or operator, a storage facility owner or operator, an employee or the agent of a storage

facility owner or operator, determined by the department to have committed a violation of R.S. 32:1711 et seq., or adopted and promulgated regulations as provided in this Chapter, is subject to legal sanctions being imposed against them. Legal sanctions shall include, but are not limited to, administrative civil penalties, warnings, and suspension and/or revocation of the operator's license, storage inspection license, tow truck license plate.

2. The department shall issue a citation or inspection report for violations of law, rule or regulation which shall specify the offense committed. The citation or inspection report shall provide for the payment of an administrative penalty to the department in an amount prescribed by the department or if a suspension or revocation is being imposed, specify the duration of said suspension or revocation. The penalty shall be paid or imposed within 45 days of issuance and mailing, by first class mail, of the initial notice of violation, unless within that period the person to whom the citation is issued files a written request for an administrative hearing within the 45 days.

3. ...

4. Schedule of Fines

<b>Schedule of Fines</b>	
<b>Scope and Relationship to Other Laws (LAC 55:I.1903 and 1905)</b>	
\$100-\$500	055.1911C5 Vehicle Staging Or Transfer During Private Property/Non-Consensual Tow
\$250	055.1939B3 Abuse Of Storage And Permit To Sell Process In Order To Obtain Title
\$100-\$500	055.1911B2A Improper Towing Fees For Non-Consensual Tow
\$100-1000	055.1909 Failure To Comply With Other Laws/Regulations
\$75	055.1909-ISB Inoperative/No Seatbelt Assembly
\$25 Driver Fine	055.1909-SB Failure For Tow Truck Operator To Wear Seatbelt
\$100	055.1909-UD Unsecured Dunnage/Tow Equipment
\$200-1000 Driver Fine	055.1930-DR Improper Nonconsensual Tow
\$200-1000 Company Fine	055.1930-TC Improper Nonconsensual Tow
\$200	055.1930-NC Failure To Possess Contract For Nonconsensual Tow
<b>Tow Truck License Plates</b>	
\$100	055.1913B2A-IC EXPIRED LA VEHICLE INSPECTION CERTIFICATE
\$150	055.1913B2A-SC Switched LA Vehicle Inspection Certificate
\$200 Driver Fine	055.1917A1-NL Unqualified Driver - No Driver's License
\$100 Driver Fine	055.1917A1-EL Unqualified Driver - Expired Driver's License
\$200-500	055.1911B2D Filing A False Or Fictitious Statement
\$100-1000	055.1911B2E Employing Prohibited Persons
\$500 Driver Fine	055.1911B2F-AB Operator Under Influence - Alcoholic Beverage

<b>Schedule of Fines</b>	
<b>Scope and Relationship to Other Laws (LAC 55:I.1903 and 1905)</b>	
\$500 Driver Fine	055.1911B2F-CS Operator Under Influence – Narcotics
\$500 Driver Fine	055.1911B2F-II Failure For Tow Truck Operator To Submit To Chemical Test
\$200-1000	055.1911C1 Unauthorized Soliciting Of Tow Business
\$200-1000	055.1911C2-DV Unauthorized Moving Of A Damaged/Disabled Veh
\$500	055.1911C3 Illegal Possession Of Police Monitoring Device(S)
\$100	055.1913A3A Failure To Use Approved Trade Name
\$100	055.1913A3C Failure To Display Trade Name/Phone #/Address Tow Truck
\$100	055.1913A3D Failure To Use Unique Trade Name On Business Documents
\$250-1000	055.1913B1-FI Submitting False Information On Towing Application
\$250-1000	055.1913B2-RV Failure To Register Vehicle As La Tow Truck
\$125-1000	055.1913B2A-NL No Towing License Displayed
\$250-1000	055.1913B2E-SP Switched Towing License Plate
\$250-1000	055.1913B2C-NT Prohibited Use/Non Transferable Towing Plate
\$100-1000	055.1913B2D Failure To Surrender Tow Plate
\$200-1000	055.1913B2B-AC Failure To Notify Dept. Of Address Change
\$100	055.1913B2-NC No La Vehicle Inspection Certificate
\$50	055.1913B2-NR No Vehicle Registration With Tow Truck
\$125-1000	055.1913B3-UW Licensing Unauthorized Tow Truck / GVWR (#) LBS
\$250-1000	055.1913B4-EL Expired Towing License Plate
\$100-300	055.1915C-NP No Proof Of All Req Insurances W/Tow Truck
<b>Commercial Driver License, Skill, and Knowledge Required (LAC 55:I.1917)</b>	
\$50 Driver Fine	055.1917A1 No Driver's License In Possession
\$200 Driver Fine	055.1917A1-DD Disqualified Driver – License Suspended/Revoked
\$100 Driver Fine	055.1917A1-OS Unqualified Driver – Out Of State License
200-1000	055.1917A-UD Allowing Unqualified Driver To Operate Veh (Carrier)
\$100 Driver Fine	055.1917A2-HM Failure To Have Hazmat Endorsement On CDL
\$300 Driver Fine	055.1917A2-RL Failure To Obtain Required CDL For Veh Driven
\$100 Driver Fine	055.1917A2-CL Unqualified Driver – Improper Class License
\$100 Driver Fine	055.1917A3-RK Failure To Possess Required Knowledge/Ability
\$150 Driver Fine	055.1917A3-UO Unsafe Operation Of Tow Truck By Driver

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:I.1903 and 1905)	
\$100 Driver Fine	055.1917A4-UA Unqualified Driver – Under 18 Yrs Of Age
\$25 Driver Fine	055.1917A5 Failure Of Driver To Wear Required Clothing
General Tow Truck Lighting and Equipment (LAC 55:I.1919) Lights	
\$25 (each)	055.1919A-SL {#} Inoperative Stop Lamp(S)
\$25 (each)	055.1919A-FT {#} Inoperative Front Turn Signal Lamp(s)
\$25 (each)	055.1919A-RT {#} Inoperative Rear Turn Signal Lamp(s)
WL	055.1919A-RI {#} Inoperative Rear Id Lamp(S)
WL	055.1919A-FI {#} Inoperative Front Id Lamp(S)
WL	055.1919A-CL {#} Inoperative Clearance Lamp(s)
WL	055.1919A-SM {#} Inoperative Side Marker Lamp(s)
\$25 (each)	055.1919A-HL {#} Inoperative Headlamp(s)
\$25 (each)	055.1919A-TL {#} Inoperative Tail Lamp(s)
WL	055.1919A-BL {#} Inoperative Back Up Lamps(s)
\$75	055.1919A-IW {#} Inoperative Emergency Warning Lamp(s)
WL	055.1919A-CC {#} Clearance Lamp(s) of Improper Color
WL	055.1919A-MC {#} Side Marker Lamp(s) of Improper Color
WL	055.1919A-IC {#} ID Lamp(s) of Improper Color
WL	055.1919A-BC {#} Back Up Lamp(s) of Improper Color
WL	055.1919A-OL {#} Obscured _____ Lamp(s)
\$100	055.1919A-AL Failure To Use Auxiliary Tow Lights When Required
\$100	055.1919C-NB No/Insufficient Amber Warning Lights
\$50-100	055.1919C-IWL Inadequate Illumination Of Amber Warning Lights
\$50	055.1919D Failure To Activate Rotating/Flashing Beacon Lights
Vehicle Components/Accessories	
\$50 (each)	055.1919B-WT {#} Tire Violation(S)
\$25 (each)	055.1919B-FL EXCESSIVE FLUID LEAK
\$75 (each)	055.1919B-DW {#} Defective/Cracked Wheel(S)
\$75 (each)	055.1919B-MB {#} Missing/Inop/Defective Brake Componets(S)
\$75 (each)	055.1919B-OA {#} Brake(S) Out Of Adjustment
\$75 (each)	055.1919B-DB {#} Defective Brake(S)
WL-\$25	055.1919B-CW Cracked Windshield(S)
WL-\$25	055.1919B-IWW {#} Inoperative Windshield Wipers
\$25	055.1919B-MW {#} Missing Windshield Wiper(S)
\$75	055.1919B-TW Improper Tinting Of Window / Windshield(s)
\$25	055.1919B-IH Inoperative Horn
\$25-100	055.1919B-IE Improper Exhaust System
\$25 (each)	055.1919B-RV {#}Missing/Broken Rear View Mirror(s)
\$25	055.1919B-FC Missing/Defective Fuel Cap
\$25 (each)	055.1919B-SG {#} Missing/Defective Splash Guard(s) (Mud Flaps)
Tow Truck Components and Required Equipment must be in Good Operating Condition (LAC 55:I.1921)	
\$25	055.1921A1-IM Inadequate Amount Of Oil Absorbing Material
\$25	055.1921A1-MC Oil Absorbing Material Exposed To The Elements
\$25	055.1921A1-NM No Oil Absorbing Material
\$25	055.1921A2-NB No/Inadequate Broom
\$25	055.1921A3-AS No/Inadequate Shovel
\$25	055.1921A4-IF Inoperative Flashlight
\$25	055.1921A4-NF Insufficient/No Flashlight

Schedule of Fines	
Scope and Relationship to Other Laws (LAC 55:I.1903 and 1905)	
\$25	055.1921A5-DE Discharged Fire Extinguisher
\$25	055.1921A5-IE Improper Type Of Fire Extinguisher - 10BC
\$50	055.1921A5-NE No Fire Extinguisher
\$25	055.1921A5-UF Unsecured Fire Extinguisher
\$25	055.1921A6-ME Defective Emergency Warning Devices
\$50	055.1921A6-NE No Emergency Warning Devices
\$25	055.1921A7-IC Inadequate Steering Wheel Clamp
\$25	055.1921A7-NC No Steering Wheel Clamp
\$25	055.1921A8-DS Defective Tow Sling
\$100	055.1921A8-ES Excessive Slack In Tow Plate
\$25	055.1921A8-IP Improperly/Unsecured Mounted Tow Plate
\$25-100	055.1921A8-MS Missing Tow Sling
\$25	055.1921A8-TS Improperly/Unsecured Mounted Tow Sling
\$25	055.1921A8-TT Inadequate Tow Sling/Plate/Bar
\$25	055.1921A8-UP Unsecured Tow Plates/Sling/Bar
\$100	055.1921A9-BC Improperly Secured Boom Cable
\$25-100	055.1921A9-BL No/Inadequate Bed Locks (Slide Back Vehicles)
\$25	055.1921A9-CS Cracked/Broken Sheaves
\$25 (each)	055.1921A9-CT {#}Cracked/Broken/Excessively Worn Thimble(S)
\$100	055.1921A9-DC Excessively Worn/Defective Cable
\$25 (each)	055.1921A9-MT {#} Missing Sheaves/Thimble(S)
\$25-100	055.1921A9-NC No/Defective Tow Vehicle Component
\$100	055.1921B1-NC No/Improper Safety Devices (Chains)
\$100	055.1921B2-IS Improper Securement Of Towed Vehicle
Capacities and Specifications of Towing Equipment (LAC 55:I.1923)	
\$200- 1000	055.1923A-LW Improper Licensing Of Gvwr Weight Of Tow Truck
\$300- \$500	055.1923-WE Exceeding Weight Capacity Of Towing Equipment
\$300- \$500	055.1923-WT Exceeding Weight Capacity Of Tow Truck
\$100- 1000	055.1923 No / Improperly Certified Tow Assembly
\$100- 1000	055.1923D-VN Missing Original Vin/Gvwr Label
Tow Truck Equipment Specifications (LAC 55:I.1925)	
Inspection By The Department (LAC 55:I.1927)	
\$300- 1000	055.1927B-TK Failure To Allow Inspection Of Tow Truck(S)
\$1000- 2750	055.1927B6 Operating Tow Truck Declared Out Of Service
\$2750	055.1927B6B Allowing The Operation Of Tow Truck Declared Out Of Service
Towing Services To Use Due Care (LAC 55:I.1929)	
\$200- 1000	055.1929A Failure To Exercise Due Care/Removal Operation
\$300- 1000	055.1929B Failure To Obey Law Enforcement Officer
Insurance Requirements (LAC 55:I.1931)	
\$500	055.1931B6-NI No Required/Storage Insurances
\$100- 1000	055.1931B6 Improper Amount Of Required Towing/Storage Insurance
\$300- 1000	055.1915C-NP No Proof Of Req Towing/Storage Insurance
Towing/Storage Facility Business Practices (LAC 55:I.1941)	
\$100	055.1943B Violation Of Storage Facility Business Hours
\$200- 1000	055.1941A-LF Failure To Store Vehicle In Licensed Storage Facility
\$100	055.1941D-AB No Visible After Business Hours Phone # Posted

Schedule of Fines Scope and Relationship to Other Laws (LAC 55:I.1903 and 1905)	
\$200-1000	055.1941E-RI Failure To Allow Removal Of Personal Items
\$100-1000	055.1941K Improper Third Party Tows / Storage
\$100-1000	055.1941L Improper Handling Of Towed/Stored Vehicles (Damaged)
\$200-1000	055.1941P No Towing Billing Invoices
\$100	055.1941P2B Billing Invoices Not Consecutively Numbered
\$100-1000	055.1941P-AI Improper/Incomplete Billing Invoices (All Invoices)
\$100-1000	055.1941P-TI Improper/Incomplete Billing Invoices (Tow Invoices)
\$100-1000	055.1941P-IC Failure To Denote Itemized Charges As They Occurr.
\$200	055.1941P3-TI Failure To Maintain Tow Invoice With Vehicle Towed
\$100-1000	055.1941Q-RC Violation Of Business Records Keeping Location
\$100-1000	055.1943B-SH Failure To Staff Towing Headquarters Facility
\$200-1000	055.1931D1 Business Records Unavailable For Inspection
Storage Procedures (LAC 55:I.1941)	
\$100-1000	055.1941B Failure To Properly Release Vehicle
\$100-1000	055.1941C-CV Inadequate Safeguards For Vehicle And Contents
\$100-1000	055.1941L Improper Handling Of Towed/Stored Vehicles (Damaged)
\$100-1000	055.1941M Illegal Disposition Of Personal Property
\$200-1000	055.1941E-RI Failure To Allow Removal Of Personal Items
\$100-1000	055.1941E-IV Failure To Allow Inspection/Viewing Of Vehicle
\$100-1000	055.1941E-CV Illegal Charging Of Inspection/Viewing Fees
Storage Facility (LAC 55:I.1941)	
\$100-1000	055.1941C-IS Improperly Secured Storage Facility Area (Fence Missing, Etc)
\$100-1000	055.1941F Improper/Inadequate Storage Lot
\$100-300	055.1941D Failure To Post Sign W/ Required Information
\$300-1000	055.1927B1 Failure To Make Facility Available For Inspection
\$200-1000	055.1941G Failure To Notify Law Enforcement Authorities
\$100-1000	055.1941H Prohibited Sharing Of Storage Facility
\$300-1000	055.1941I-MR Failure To Maintain Required Storage Records For Req Period
\$300-1000	055.1931D-PR Failure To Provide Storage Records For Review
Storage Fees (LAC 55:I.1945)	
\$100-1000	055.1943C Excessive/Improper Storage Fees
\$100-1000	055.1945B Excessive/Improper Gate Fees
Notification To Dept. Public Safety & Corrections (LAC 55:I.1935)	
\$100-1000	055.1933A1 FAILURE TO NOTIFY DEPARTMENT (3 DAYS, ORSV)
\$100-1000	055.1933A1-IF Incomplete/Improper Filing Of ORSV
\$200-1000	055.1935-LM Failure To Notify Owner/Lien/Mortgage Holder

Schedule of Fines Scope and Relationship to Other Laws (LAC 55:I.1903 and 1905)	
\$200-1000	055.1935-RI Failure To Provide Required Information
\$200-1000	055.1935-CL Failure To Mail Notice By Cert Of Mailing
\$200-1000	055.1937 Excessive Administrative Fees
\$100-1000	055.1939 Violation Of Permit To Sell Requirements
Licensing; Storage Facilities (LAC 55:I.1931)	
\$200-1000	055.1931-Failure To License Storage Facility
\$200-1000	055.1931A4 Expired Storage Inspection License
\$200-1000	055.1931D2 Failure To Display Storage Inspection License
\$300-1000	055.1931A3 Failure To Notify Lsp Of Chg In Name/Ownership/Address
Law Enforcement Rotation Lists (LAC 55:I.1947)	
\$100-200	055.1947A4 Failure To Respond Within 45 Minutes
\$25-1000	055.1947A2 Failure To Comply W/LSP Policies and Procedures

## B. Administrative Hearings

1. - 3. ...

4. In such cases, on or after the forty-sixth day the department shall inform the responsible party by first class mail of the conviction and that he has 30 days from the date of this notice to pay the penalty or the Office of Motor Vehicles shall suspend his driver's license and/or vehicle registration. Suspending the vehicle registration shall mean any registration transaction, including renewal, may be denied.

5. ...

C. - D.1a. ...

i. a tow truck license plate removed or denied renewal pursuant to this Part may only be reinstated upon receipt of payment of fines and fees owed the department;

1.b. - 2....

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006), amended LR 35:2201 (October 2009), LR 36:

## §1911. Code of Conduct

A. - B.2.f.ii. ...

iii. every owner or operator shall ensure there is no presence of an alcoholic beverage, narcotic, or controlled dangerous substance within the tow truck.

C. - C.4.a. ...

### 5. Vehicle Staging or Transfer

a. The operator of a tow truck, towing service, employee or agent shall not tow any vehicle to any location other than that company's licensed storage facility without prior authorization of that vehicle's owner.

b. Vehicles shall not be towed from their original location to a secondary location for the purpose of transfer to another tow truck unless the primary tow truck has become disabled and cannot complete the tow. In this case the primary tow truck an it's driver must wait with the towed vehicle until a second tow truck arrives to complete the tow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:855 (May 2006), amended LR 36:

### **Subchapter B. Tow Truck License Plate; Required Insurance**

#### **§1913. Tow Truck License Plate**

A. - B.3.a.i. ...

ii. a tow truck has a GVWR of 10,000 pounds or less and it shall not be used for towing vehicles for compensation; unless the year of manufacture is prior to 2007, in which case, a GVWR of 10,000 pounds shall not be cause for denial, or

C. - C.1.c. ...

d. Is found to have been convicted of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession a stolen vehicle(s) or stolen vehicle parts or employs someone convicted of one of the above stated offenses.

D. - D.1.c. ...

d. obtaining a tow truck license plate under false pretenses; or is found to have been convicted of felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle and/or possession of vehicle(s) or stolen vehicle parts or employees someone convicted of one of the above stated offenses.

e. - h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:856 (May 2006), amended LR 36:1270 (June 2010), LR 36:

#### **§1930. Vehicles Towed from private property**

A. Tow truck company owners, operators, and employees shall comply with the provisions of R.S. 32:1736 when towing vehicles from private property.

B. Towing and storage companies that conduct nonconsensual tows shall possess authority through the Louisiana Public Service Commission and a valid storage inspection license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 36:

### **Subchapter D. Vehicle Storage**

#### **§1931. Storage Facility; Licensing, Fees, Inspection, Requirements**

A. Storage Facilities

1. Storage facilities, subject to the provisions of R.S. 32:1711 et seq., shall be located within Louisiana and make application to the department for a storage inspection license for each storage facility location.

2. A valid storage inspection license must be issued by the department before conducting business as a storage facility or a new storage facility location being utilized.

A.3. - B.7. ...

8. Storage facilities must have their place of business and storage area located on the same piece of property. The property may not be subdivided by any public street, right of way, or other piece of property not owned or leased by the

storage facility. This provision will apply to all new storage facility applicants effective July 1, 2010 and will not affect licensed facilities seeking a renewal.

C. - C.1. ...

a. remit the sum of \$100 per storage license, payable to the Louisiana State Police, Towing and Recovery Unit;

b. ...

D. Inspection of a Storage Facility

1. Storage facilities shall make business records available for inspection by department officers during normal business hours, unless exigent circumstances exist which may require access to records after hours and shall provide copies upon request. Business records shall include any records created or obtained while acting as a towing and/or storage facility.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006), amended LR 36:

#### **§1933. Requirements for Official Report of Stored Vehicle (ORSV); Filing; Submittal; Option of the Department to Send and Receive ORSV Information**

A. - A.1. ...

a. File an Official Report of Stored Vehicle (ORSV) within three business days of receiving the vehicle in writing addressed to the Department of Public Safety and Corrections, Office of Motor Vehicles, Specialized Vehicle Unit, P.O. Box 64886, Baton Rouge, LA 70896, or the department's authorized agent. If the vehicle is released to the vehicle owner within three business days of towing or receiving the vehicle, a storage/towing company shall not be required to submit the ORSV notification and if the ORSV notification is not made prior to the release of the vehicle, there shall be no charge for related administrative fees.

A.1.b. - B.1.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006), amended LR 36:

#### **§1937. Administrative Fees**

A. Administrative fees for storage of vehicles shall not be charged or otherwise collected without possession of a valid storage inspection license, and the timely filing of an ORSV prior to the release of the vehicle or other notification requirements in the Towing and Storage Act.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006), amended LR 36:

#### **§1939. Permits to Sell and Permits to Dismantle**

A. - B.2. ...

3. Licensed Storage Facilities shall not place a vehicle into storage for the purposes of circumventing acceptable

titling practices and the payment of statutorily required taxes and fees.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006), amended LR 36:

#### **§1941. Storage and Towing Facilities; General Requirements; Procedures**

A. A facility may only store and charge storage on vehicles that are in the facility's actual possession, located within the licensed storage area and meets the requirements of this Chapter.

B. Vehicles shall be released immediately to the vehicle owner or lien holder, or authorized agent once payment is made, any applicable lien holder requirements (R.S. 32:1720.1) are met, and any applicable documented law enforcement or department hold orders are released.

C. Storage and towing facilities shall provide for the security and safety of vehicles stored in accordance with this Chapter. Storage areas shall have security barriers or safety apparatus suitable to insure the security of the property contained therein. Outside storage areas shall be enclosed by at least a 6 foot high chain link fence, or fence of similar strength or solid wall sufficient to protect against loss, trespass or vandalism. The loss, damage, theft or misappropriation of a stored vehicle or its contents shall be evidence of a violation of this provision, if the loss, damage, theft or misappropriation was supported by sufficient evidence.

D. - F. ...

G. Whenever any vehicle has been towed to a storage facility, other than by owner's request, the owner or operator of the storage facility shall comply with the law enforcement notification requirements found in R.S. 32:1718.

H. - M. ...

N. The address that the towing or storage service lists on its applications shall be the business location where its business records are kept.

O. - Q.9....

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006), amended LR 36:

#### **Subchapter E. Rotation List**

##### **§1947. Law Enforcement Tow Truck Rotation List**

A. - A.4. ...

5. Towing and storage facilities storing a vehicle that has a law enforcement hold, and the law enforcement agency requesting the hold, shall comply with R.S. 32:1735.1. Law enforcement agencies requesting to extend the hold beyond the initial 14 days shall submit the request in writing, on the agency's letterhead, to the storage facility. This request shall be kept on file at the facility and must contain the following information:

- a. the name and contact information of the officer requesting the hold;
- b. the name of the vehicle's owner, if available;

c. the license plate number with state of issue and vehicle identification number;

d. the year, make, and model of the vehicle

B. - H.2.a.iii ...

iii. Tow truck minimum qualifications:

(a). GVW rating of not less than 10,001 pounds as rated by the manufacturer. Tow trucks manufactured prior to 2007 shall have a GVW rating of not less than 10,000 pounds;

(b). minimum of 60 inches from rear of cab to center of rear axle;

(c). adequate service brake system for normal and adverse towing conditions;

iii.(d). - iv(a). ...

(b). power winch rated not less than 20,000 pounds, dual winches must have a minimum of 150 feet wire rope per winch with a breaking strength of 21,000 pounds and 1/2 inch in diameter.

b.v. - c. ...

i. The towing company may own and maintain for service at least one heavy duty tow truck in addition to at least one light or medium duty tow truck.

H.2.c.ii. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:863 (May 2006), amended LR 36:546 (March 2010), LR 36:

#### **Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule should not have any effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule should not have any effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule should not have any effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

#### **Public Comments**

Interested persons may submit written comments to: Paul Schexnayder, Post Office Box 66614, Baton Rouge, La. 70896. Written comments will be accepted through September 15, 2010.

Jill Boudreaux  
Undersecretary

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

**RULE TITLE: Towing, Recovery and Storage**

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

The proposed rule changes will have no impact on state or local governmental expenditures.

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

There will be no impact on state or local governmental revenue collections as a result of these proposed rule changes.

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

The towing and storage industry will be affected by these rule changes. There will be no increase in costs to this industry as these changes do not add any additional fees or equipment requirements to the industry. The storage license requirement that the storage site and the storage office must be located at the same site may result in additional costs for new companies seeking a storage license. Existing companies would be exempt from the new requirement for a storage license and would be grandfathered in.

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

The proposed rule change will not affect competition or employment.

Jill P. Boudreaux  
Undersecretary  
1008#089

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Transportation and Development  
Transportation Research Center**

LTRC Transportation Training and Education Fund  
(LAC 70:XXVII.Chapter 1)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to enact Part XXVII, Chapter 1, of Title 70 entitled "LTRC Transportation Training and Education Fund", in accordance with the provisions of R.S. 48:105.1.

**Title 70  
TRANSPORTATION**

**Part XXVII. Louisiana Transportation Research Center  
(LTRC)**

**Chapter 1. LTRC Transportation Training and  
Education Fund**

**§101. General Provisions**

A. All fees collected shall be deposited in the fund or disbursed from the fund as provided in R.S. 48:105.1 and in the following rules.

B. All monies deposited in the fund in compliance with the statute shall be used to defray the expenses associated with workforce development activities of the Louisiana Transportation Research Center (LTRC) and LTRC's Transportation and Training Education Center (TTEC).

C. Allowable expenses include (but are not limited to):  
1. course development and delivery costs for courses organized and managed by LTRC;

2. direct workforce development training costs, such as reimbursement for events or courses organized and managed by LTRC;

3. maintenance and upkeep of the TTEC building not funded by Louisiana State University;

4. maintenance, upkeep, upgrade, or replacement of the audio visual equipment, to include all software and hardware used by LTRC for workforce development activities, such as classes, conferences, meetings, etc.;

5. purchase, maintenance, upkeep, upgrade, or replacement of computer equipment, including peripherals, used in the development and dissemination of training materials used for workforce development;

6. supplies and other items purchased in direct support of workforce development activities.

**D. Prohibited expenses include:**

1. purchase of supplies not directly related to workforce development activities;

2. any and all travel expenses;

3. individual membership dues to professional organizations;

4. conference/meeting/training registration fees;

5. any form of personal use, such as cash advances, gifts, entertainment-related expenses;

6. alcohol.

**E. Authorized Account Agents**

1. Signatory authority for the fund will be the same as that authority granted for Department individuals to sign contracts.

2. The chief engineer of the department will have authority to disburse funds in single transaction amounts not to exceed \$50,000.

3. The Director of LTRC will have authority to disburse funds in single transaction amounts not to exceed \$20,000.

4. The Associate Director of Training for LTRC will have authority to disburse funds in single transaction amounts not to exceed \$2,000.

**F. Fund Accounting**

1. Standard accounting procedures will be administered by the LTRC Business Office.

2. The LTRC Business Office duties will include preparation of monthly reconciliation reports to be approved by the LTRC Associate Director of Training.

3. The LTRC Business Office will serve as technical advisor for accounting matters associated with this fund.

**G. Ethics**

1. Agents authorized to collect and disburse funds from the account must comply with the regulations relative to ethical conduct under the Code of Governmental Ethics, Chapter 15 of Title 42 of the Louisiana Revised Statutes.

**AUTHORITY NOTE:** Promulgated by the Louisiana Department of Transportation and Development, Louisiana Transportation Research Center, pursuant to R.S. 48:105.1.

**HISTORICAL NOTE:** Promulgated by the Louisiana Department of Transportation and Development, Louisiana Transportation Research Center, LR 36:

**§103. Calculation of Fees**

A. Governmental attendees shall be charged the actual cost of the program attended.

B. Non-governmental attendees shall be charged the actual cost of the program plus a 66 percent surcharge (approximate).

AUTHORITY NOTE: Promulgated by Louisiana Department of Transportation and Development, Louisiana Transportation Research Center, pursuant to R.S. 48:105.1.

HISTORICAL NOTE: Promulgated by Louisiana Department of Transportation and Development, Louisiana Transportation Research Center, LR 36:

**Family Impact Statement**

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

- 1. the implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family;
- 2. the implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children;
- 3. the implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family;
- 4. the implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget;
- 5. the implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children;
- 6. the implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

**Public Comments**

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, DOTD Legal Section, P.O. Box 94245, Baton Rouge, LA 70804, Telephone (225)237-1359.

Sherri H. Lebas, P.E.  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: LTRC Transportation Training and  
Education Fund**

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

There is no anticipated direct material effect on governmental expenditures as a result of these proposed administrative rules. These proposed administrative rules set forth allowable and prohibited expenditures for this fund. Pursuant to Act 49 of the 2007 Regular Legislative Session, these proposed administrative rules provide for the use and disposition of the Louisiana Transportation Research Center (LTRC) Transportation Training and Education Center. To the extent that these administrative rules are promulgated, DOTD will likely submit a budget adjustment request to the Joint Legislative Committee on the Budget (JLCB) to appropriate these funds in FY 11.

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

Pursuant to Act 49 of the 2007 Regular Legislative Session, these proposed administrative rules provide for the use and disposition of the Louisiana Transportation Research Center Transportation Training and Education Fund. Act 49 of the 2007 Regular Legislative Session provides for DOTD to assess reasonable registration fees to participants in transportation education courses offered by the LTRC. The proposed administrative rules provide for governmental attendees to be charged the actual cost of the program. The LTRC is anticipating generating approximately \$98,000 in FY 11, \$100,000 in FY 12 and \$125,000 in FY 13 from the fees within the proposed administrative rules. To date, the LTRC has collected approximately \$265,000 and none of these revenues have been expended.

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

The proposed administrative rules provide for non-governmental attendees of training courses offered by the Louisiana Transportation Research Center to be charged the actual cost of the program plus a 66% surcharge. The 66% surcharge is based upon comparable training program rates within the private sector.

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

There is no anticipated direct material effect on competition and employment. These proposed administrative rules merely put into administrative rules provisions associated with the Louisiana Transportation Training and Education Fund.

Eric Kalivoda  
Deputy Secretary  
1008#083

Robert E. Hosse  
Staff Director  
Legislative Fiscal Office



# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 13-14, 2010, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates: September 3, 2010  
Re-Take Candidates: September 24, 2010  
Reciprocity Candidates: November 4, 2010

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 3, 2010. Questions may be directed to (225) 952-8100.

Mike Strain, DVM  
Commissioner

1008#067

## POTPOURRI

### Board of Elementary and Secondary Education

Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel  
(LAC 28:CXLVII.Chapters 1-9)

In May of 2010, the State Board of Elementary and Secondary Education approved for Notice of Intent *Bulletin 130: Regulations for the Evaluation and Assessment of School Personnel*. In spring 2010, the Louisiana Legislature adopted Act 54. Because new statute affected the proposed rule (Bulletin 130), changes were made to the proposed rule. In accordance with RS 49:968(H)(2), the Louisiana Department of Education will hold a meeting to discuss such changes. The meeting will be held in Baton Rouge, Louisiana, at the Claiborne Building, in Conference Room 3-211 on September 27, 2010, from 1:30-3:00 pm.

Jeanette Vosburg  
Executive Director

1008#127

## POTPOURRI

### Office of the Governor Gaming Control Board

Video Draw Poker  
Enforcement Actions of the Board  
(LAC 42:XI.2424)

In July of 2010, the Louisiana Gaming Control Board published Notice of Intent: *Video Draw Poker (LAC 42:XI.2424 ) Enforcement Actions of the Board*. In August 2010, the Gaming Control Board voted to alter the proposed rule. In accordance with RS 49:968(H)(2), the Louisiana Gaming Control Board, through its attorney, will hold a public hearing to discuss the changes. The public hearing will be held in Baton Rouge, Louisiana, at the Livingston Building, in the Gaming Division Conference Room on September 28, 2010, from 8 a.m.–9 a.m.

Jonathon Wagner, AAG

1008#128

## POTPOURRI

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

#### Fall/Winter Examination Dates

The Louisiana Board of Veterinary Medicine will administer the State Board Examination (SBE) for licensure to practice veterinary medicine on the first Tuesday of every month. Deadline to apply for the SBE is the third Friday prior to the examination date desired. SBE dates are subject to change due to office closure (i.e. holiday, weather).

The Board will accept applications to take the North American Veterinary Licensing Examination (NAVLE) which will be administered through the National Board of Veterinary Medical Examiners (NBVME), formerly the National Board Examination Committee (NBEC), as follows:

Test Window Date	Deadline To Apply
November 15 through December 11, 2010	Sunday, August 1, 2010

The Board will also accept applications to take the Veterinary Technician National Examination (VTNE) which will be administered through American Association of Veterinary State Boards (AAVSB), for state registration of veterinary technicians as follows:

Test Date	Deadline To Apply
November 15 – December 15, 2010	Friday, October 15, 2010
March 1 – March 31, 2011	Monday, February 1, 2011

Applications for all examinations must be received on or before the deadline. No late application will be accepted. Requests for special accommodations must be made as early as possible for review and acceptance. Applications and information may be obtained from the board office at 263 Third Street, Suite 104, Baton Rouge, LA 70801 and by request via telephone at (225) 342-2176 or by e-mail at admin@lsbvm.org; application forms and information are also available on the website at www.lsbvm.org.

Wendy D. Parrish  
Executive Director

1008#077

**POTPOURRI**

**Louisiana Workforce Commission  
Office of Workers' Compensation Administration**

**Weekly Compensation Benefits Limits**

Pursuant to R.S. 23:1202 and based on the statewide average weekly wage as determined by the Louisiana Workforce Commission, the following limits shall apply to weekly compensation benefits for claimants injured during the period of September 1, 2010 through August 31, 2011.

Average Weekly Wage	Maximum Compensation	Minimum Compensation	Mileage Reimbursement
\$772.18	\$579.00	\$154.00	* .48 cents per mile

\*Effective July 1, 2010 the mileage reimbursement is .48 cents per mile pursuant to R.S. 23:1203(D).

Chris Broadwater  
Director

1008#046

**POTPOURRI**

**Louisiana Workforce Commission  
Office of Workers' Compensation Administration**

**Average Weekly Wage Rate**

Pursuant to Act 583 of the Regular Session of the 1975 Louisiana Legislature, this state's average weekly wage upon which the maximum workers' compensation weekly benefit amount will be based, effective September 1, 2010 has been determined by the Louisiana Workforce Commission to be \$772.18.

	Average Weekly Wage	Maximum Comp	Minimum Comp
Sept 1, 1985 - Aug 31, 1986	339.24	254.00	68.00
Sept 1, 1986 - Aug 31, 1987	347.65	261.00	70.00
Sept 1, 1987 - Aug 31, 1988	348.80	262.00	70.00
Sept 1, 1988 - Aug 31, 1989	356.40	267.00	71.00
Sept 1, 1989 - Aug 31, 1990	367.90	276.00	74.00
Sept 1, 1990 - Aug 31, 1991	376.02	282.00	75.00
Sept 1, 1991 - Aug 31, 1992	393.08	295.00	79.00
Sept 1, 1992 - Aug 31, 1993	409.30	307.00	82.00
Sept 1, 1993 - Aug 31, 1994	424.91	319.00	85.00
Sept 1, 1994 - Aug 31, 1995	430.21	323.00	86.00
Sept 1, 1995 - Aug 31, 1996	440.55	330.00	88.00
Sept 1, 1996 - Aug 31, 1997	454.67	341.00	91.00
Sept 1, 1997 - Aug 31, 1998	466.57	350.00	93.00
Sept 1, 1998 - Aug 31, 1999	489.95	367.00	98.00
Sept 1, 1999 - Aug 31, 2000	512.47	384.00	102.00
Sept 1, 2000 - Aug 31, 2001	517.93	388.00	104.00
Sept 1, 2001 - Aug 31, 2002	530.43	398.00	106.00
Sept 1, 2002 - Aug 31, 2003	554.31	416.00	111.00
Sept 1, 2003 - Aug 31, 2004	572.53	429.00	114.00
Sept 1, 2004 - Aug 31, 2005	584.40	438.00	117.00
Sept 1, 2005 - Aug 31, 2006	605.46	454.00	121.00
Sept 1, 2006 - Aug 31, 2007	637.19	478.00	127.00
Sept. 1, 2007 - Aug 31, 2008	696.00	522.00	139.00
Sept. 1, 2008 - Aug. 31, 2009	728.10	546.00	146.00
Sept. 1, 2009 - Aug. 31, 2010	768.83	577.00	154.00
Sept. 1, 2010 - Aug. 31, 2011	772.18	579.00	154.00

Actual wages are to be paid if the wages are less than the minimum.

Approved "Mileage Rate" as of July 1, 2010 is .48 per mile.

Chris Broadwater  
Director

1008#047

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

Advanced Notice and Solicitation of Comments on Proposed Rulemaking for Onsite Exploration and Production Waste Pollution Control and Oilfield Pit Regulations (LAC 43:XIX.301, 303 and 313)

The Department of Natural Resources, Office of Conservation is requesting comments on proposed amendments to regulations under LAC 43:XIX.Subpart 1.Chapter 3, Pollution Control-Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations). The proposed regulatory amendments are summarized as follows and provided in length thereafter.

The proposed amendments will; A) provide greater specificity and clarification to the definition of "Contamination" under LAC 43:XIX.301, B) recognize acceptance of Department of Environmental Quality Risk

Evaluation/Corrective Action Program methods to address contamination under the general requirements of LAC 43:XIX.303 and C) codify the necessity for landowner consent on "future land use" determinations applicable to land treatment criteria under LAC 43:XIX.313.D. Respective proposed regulatory revisions are detailed as follows.

A) LAC 43:XIX.301. Definitions

*Contamination*—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil at or below an area (site) located within an onsite location in such quantities as to render them reasonably unsuitable for purposes consistent with use of the site immediately preceding the onset of onsite oil and gas exploration and production activities.

B) LAC 43:XIX.303.D. Onsite areas found to have contamination as defined in LAC 43:XIX.301 shall be properly addressed according to the provisions of this chapter or any other applicable requirement of LAC 43:XIX.Subpart 1 unless otherwise authorized by the commissioner in accordance with LAC 43:XIX.319.A. Use of Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP) methods to address contamination will be considered on a case-by-case, site-by-site basis in accordance with LAC 43:XIX.319.A.

LAC 43:XIX.303.D becomes E, E becomes F, etc. for remainder of LAC 43:XIX.303.

C) LAC 43:XIX.313.D. Land Treatment. Pits containing E&P Waste may be closed onsite by mixing wastes with soil from pit levees or walls and adjacent areas provided waste/soil mixtures at completion of closure operations do not exceed the following criteria, as applicable, unless the operator can show that higher limits for EC, SAR, and ESP can be justified for future land use with land owner consent or that background analyses indicate that native soil conditions exceed the criteria.

The following includes the full length proposed regulatory amendment.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations**

**Subpart 1. Statewide Order No. 29-B**

**Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)**

**§301. Definitions**

\*\*\*

*Contamination*—the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil at or below an area (site) located within an onsite location in such quantities as to render them reasonably unsuitable for purposes consistent with use of the site immediately preceding the onset of onsite oil and gas exploration and production activities.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2798 (December 2000), amended LR 33:1653 (August 2007).

**§303. General Requirements**

A. - C. ...

D. Onsite areas found to have contamination as defined in LAC 43:XIX.301 shall be properly addressed according to the provisions of this chapter or any other applicable requirement of LAC 43:XIX.Subpart 1 unless otherwise authorized by the commissioner in accordance with LAC 43:XIX.319.A. Use of Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP) methods to address contamination will be considered on a case-by-case, site-by-site basis in accordance with LAC 43:XIX.319.A.

E. Produced water and other E&P Waste generated in the drilling and production of oil and gas wells shall not be disposed of into a zone producing or productive of hydrocarbons unless such disposal is approved by the Office of Conservation after a public hearing or unless prior approval to use the proposed zone for such disposal can be documented.

F. The discharge of produced water or other E&P Waste (including drilled solids) into manmade or natural drainage or directly into state waters is allowed only in conformance with any applicable state or federal discharge regulatory program.

G. The use of closed E&P Waste storage systems is encouraged by the Office of Conservation; therefore, the use of new or existing pits to store produced water, drilling fluids, and other E&P Waste generated from the drilling and production of oil and gas wells is prohibited unless:

1. notification for each pit is submitted to the Office of Conservation as outlined in §305; and

2. pits are in conformance with standards set forth in §307.

H. Unless exempted from liner requirements in §303.K.8 or §303.M below, all existing produced water pits, onshore terminal pits, and washout pits which are to be utilized in the operation of oil and gas or other facilities must be shown to comply with the liner requirements of §307.A.1.a or be permanently closed in accordance with the pit closure criteria of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

I. All existing pits which are not to be utilized in the operation of oil and gas or other facilities must be permanently closed according to the requirements of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

J. Operators of existing pits are required to comply with all applicable operational requirements of §307.A.2 and 4, §307.B.1, 2, and 3, §307.C.2, 4, 5, and 6, §307.D.2, 4, and 5, §307.E.1, 3, 4, and 6, and §307.F.1 and 3.

K. Production pits, except for those identified in §303.K.1 and §303.M below, may not be constructed in a "V" or A zone as determined by flood hazard boundary or rate maps and other information published by the Federal Emergency Management Agency (FEMA), unless such pits have levees which have been built at least 1 foot above the 100-year flood level and able to withstand the predicted

velocity of the 100-year flood. Location, construction and use of such pits is discouraged.

L. Production pits located in the coastal area shall be subject to the following requirements.

1. Except for exempt pits, no production pit may be constructed in the coastal area after June 30, 1989.

2. Production pits located in the coastal area shall be closed in compliance with §311 and §313 by January 1, 1993 with the following exceptions:

a. exempt pits as such term is defined in §301;

b. any onshore terminal pit that was in existence on June 30, 1989, provided such pit has an approved Louisiana Water Discharge Permit System (LWDPS) permit applicable thereto. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307;

c. any production pit which is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit is not subject to the closure requirements of §311 and §313 until January 1, 1995 or until expiration of such permit which ever occurs first. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307.

3. Operators of existing production pits located in the coastal area shall submit Form ENG 15-CP to the Office of Conservation by January 1, 1991. Pits closed prior to October 20, 1990 are not considered existing pits for purposes hereof.

4. Operators intending to construct an exempt pit shall submit Form ENG-15-CP to the Office of Conservation at least 10 days prior to start of construction thereof.

5. Production pits located within the coastal area must maintain a levee with an elevation of at least 2 feet above mean high tide, the liquid level in pit(s) shall not be permitted to rise within 2 feet of top of pit levee or walls, and any surface water discharge from an active pit must be done in accordance with appropriate state or federal regulatory programs. Such discharge must be piped to open water (within the marsh) that receives good flushing action and shall not otherwise significantly increase the salinity of the receiving body of water or marsh. Further, unless otherwise indicated in §303.K.6, 7, 8 and 9, production pits located in the coastal area shall comply with the standards and operational requirements set forth in §307.

6. Burn pits, compressor station pits, natural gas processing plant pits, and well test pits located in the coastal area are exempt from the liner requirements of §307.A.

7. Salt dome cavern pits are exempt from the liner requirements of §307.A.

8. Produced water pits, washout pits, and onshore terminal pits located in the coastal area shall comply with the liner requirements of §307.A unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

9. Emergency pits located in the coastal area shall comply with the requirements of §307.E unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

10. Any production pit which is not subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit on October 20, 1990 shall submit a closure plan to the Office of Conservation by January 1, 1991.

M. Within six months of the completion of the drilling or workover of any permitted well, the operator (generator) shall certify to the commissioner by filing Form ENG-16 the types and number of barrels of E&P Waste generated, the disposition of such waste, and further certify that such disposition was conducted in accordance with applicable rules and regulations of the Office of Conservation. Such certification shall become a part of the well's permanent history.

N. Based upon the best practical technology, production pits located within an 'A' zone (FEMA) which meet the following criteria are not subject to the levee height requirements of §303.J above or the liner requirements of §307.A.1:

1. pit size is less than or equal to 10' x 10' x 4' deep;

2. such pit contains only produced brine; and

3. such pit is utilized for gas wells producing less than 25 mcf per day and less than or equal to one barrel of saltwater per day (bswpd).

O. Evidence of contamination of a groundwater aquifer or USDW may require compliance with the monitoring program of §309, compliance with the liner requirements of §307.A.1, or immediate closure of the pit.

P. The commissioner may authorize, without the necessity of a public hearing, the disposal of produced water into a zone producing or productive of hydrocarbons upon application of the operator of an existing or proposed disposal well. Such written request shall include the following:

1. the appropriate permit application as per the requirements of LAC 43:XIX.Chapter 4;

2. evidence establishing the production mechanism of the proposed disposal zone is aquifer expansion (water drive);

3. evidence demonstrating the subject disposal well is not productive in the proposed disposal zone;

4. a plat showing the subject disposal well is not located within 330' of a property line as it is defined in LAC 43:XIX.1901;

5. written consent of all operators of record with existing wells within a 1/4 mile radius of the subject well; and

6. such other information which the commissioner may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000), amended LR 30:254 (February 2004), LR 33:1654 (August 2007).

### **§313. Pit Closure Techniques and Onsite Disposal of E and P Waste**

A. - C. ...

D. Land Treatment. Pits containing E and P Waste may be closed onsite by mixing wastes with soil from pit levees or walls and adjacent areas provided waste/soil mixtures at completion of closure operations do not exceed the following criteria, as applicable, unless the operator can show that higher limits for EC, SAR, and ESP can be justified for future land use with landowner consent or that background analyses indicate that native soil conditions exceed the criteria.

D.1 - J.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2804 (December 2000), amended LR 33:1659 (August 2007), LR 35:2464 (November 2009), LR 36:1265 (June 2010).

Written comments concerning the draft Rule are due no later than 4:30 p.m., September 20, 2010, and should be submitted to John Adams, Office of Conservation, P.O. Box 94275 Capitol Station, Baton Rouge, LA 70804-9275 or by Fax to (225) 342-3094. Persons commenting should reference this document as ENV 10-04.

James H. Welsh  
Commissioner

1008#081

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation**

**Orphaned Oilfield Sites**

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
P. T. Mize	Wildcat-No La Shreveport Dist	S	La Oil Refg Corp	001	13291
James E. Kemp	Big Creek	M	Ratcliff	A-2	33465

James H. Welsh  
Commissioner

1008#066

**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary  
Fishermen's Gear Compensation Fund**

**Loran Coordinates**

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that nine claims in the amount of \$40,349.84 were received for payment during the period July 1, 2010-July 31, 2010.

There were eight claims paid and one claim denied.

Cynthia Bridges  
Secretary

Latitude/Longitude Coordinates of reported underwater obstructions are:

2908.18	9021.492	Lafourche
2913.061	8907.467	Plaquemines
2917.00	9045.590	Terrebonne
2933.470	8943.717	St. Bernard
2939.163	8933.068	St. Bernard
2944.733	8936.952	St. Bernard
2948.643	8940.977	St. Bernard
2950.191	8941.337	St. Bernard
2952.328	8924.932	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Robert D. Harper  
Secretary

1008#126

**POTPOURRI**

**Department of Revenue  
Office of the Secretary**

**August Meeting of Act 442 Collaborative Working Group**

The next meeting of the Collaborative Working Group will be conducted on Wednesday, August 25, 2010, at 9 a.m. in the LaBelle Room on the first floor of the LaSalle Building, 617 N. Third Street, Baton Rouge, Louisiana.

Section 4 of Act 442 of the 2009 Regular Session of the Louisiana Legislature established a collaborative working group of state and local tax administrators and industry representatives for the purpose of assisting in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

The group's mission is to study and develop specific proposals on the definition of tangible personal property under Chapters 2, 2-A, 2-B and 2-D of Title 47 of the Louisiana Revised Statutes of 1950. The group shall report its policy recommendations to the chairmen of the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than January 31, 2011.

The group shall cease to exist on June 30, 2011.

Further information concerning this meeting may be obtained from Ted James, Office of the Secretary, P.O. Box 66258, Baton Rouge, LA 70896, phone (225) 219-2707.

1008#068

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